

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1037

B

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

v.

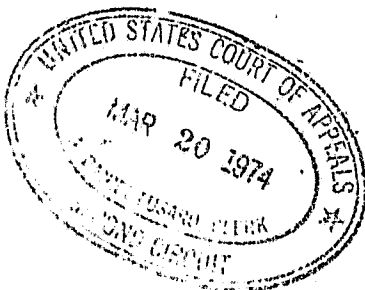
JOHN CAPRA, LEOLUCA GUARINO and STEPHEN DELLACAVA,

Defendants-Appellants.

On Appeal from Judgment of Conviction from the United States
District Court for the Southern District of New York

Appendix

(Vol. II - Pages 1 — 280)



BARRY IVAN SLOTNICK
Attorney for Appellant, CAPRA
15 Park Row
New York, N.Y. 10038
(212) 233-5390

GEORGE L. SANTANGELO
Attorney for Defendant, GUARINO
253 Broadway
New York, N.Y. 10007
(212) 267-4488

LAWRENCE STERN
Attorney for Appellant, DELLACAVA
343 West 29th Street
New York, N.Y. 10001
(212) 947-0537

TABLE OF CONTENTS

Volume I	Page
Docket Entries	i
Indictment	A-1
Notice of Motion	A-10
Affidavit of Barry Ivan Slotnick In Support	A-11
Application for Severance	A-59
Affidavit of John Capra In Support	A-62
Affidavit of Patrick Guarino In Support	A-69
Petition	A-90
Affidavit of Dennis McAlevy In Support	A-92
Letter Dated December 24, 1973 from Slotnick & Narral to Hon. Marvin E. Frankel	A-96
Defendant Guarino's Memorandum of Law	A-104
Notice of Motion	A-118
Affidavit of Dennis McAlevy In Support	A-120
Affidavit of Steven Della Cava In Support	A-136
Affidavit of Leoluca Guarino In Support	A-138
Affidavit of John Capra In Support	A-139
Affidavit of Leoluca Guarino In Support	A-140
Notice of Motion	A-142

PAGINATION AS IN ORIGINAL COPY

	Page
Affidavit of Steven Della Cava In Support	A-143
Affidavit of John Capra In Support	A-145
Affidavit of Leoluca Guarino In Support	A-146
Notice of Motion Dated Sept. 5, 1973	A-147
Affidavit of Dennis D.S. McAlevy	A-148
Affidavit of Barry Ivan Slotnick In Support	A-149
Affidavit of Leoluca Guarino In Support	A-150
Letter Dated Sept. 7, 1973 from Gerald A. Feffer, U.S. Attorney to Hon. Marvin E. Frankel	A-151
Memorandum of Justice Frankel Dated Oct. 16, 1973 ..	A-154
Memorandum on Pretrial Publicity	A-163
Memorandum of Justice Frankel Dated Nov. 27, 1973 ..	A-186
Memorandum of Justice Frankel Dated Dec. 27, 1973 ..	A-190
Memorandum of Justice Frankel Dated Dec. 4, 1973 ...	A-208
Memorandum of Justice Frankel Dated Oct. 15, 1973 ..	A-228
Eavesdropping Warrant Dated Dec. 8, 1971	A-230
Affidavit of Frank S. Hogan In Support	A-233
Affidavit of George Eaton In Support	A-235
Affidavit of John J. Hill In Support	A-255
Affidavit of William McCrorie In Support	A-259

	Page
Extension and Amendment of Eavesdropping Warrant Dated Jan. 6, 1972	A-260
Affidavit in Support of Frank S. Hogan	A-262
Affidavit in Support of Detective George Eaton	A-264
Volume II	
Transcript of Testimony of Pre-Trial Hearing	1
Stephen Dellacava, direct	2
cross	9
redirect	31
recross	33
John Capra, direct	34
cross	37
redirect	52
recross	53
Leoluca Guarino, direct	55
cross	60
redirect	132
recross	136
David Samuel, direct	142
cross	146
redirect	222
recross	224
George Eaton, direct	234
cross	272
redirect	275

Volume III

Bernard Gillespie, direct	281
cross	287
Michael Santangelo, direct	345
cross	360
redirect	409

	Page
Robert Allen, direct	426
cross	429
Michael A. Waniewski, direct	468
cross	472
redirect	485
recross	486
John Hill, direct	539
cross	545
redirect	695
recross	699

Volume IV

Clifford Scott Fishman, direct	744
cross	769
George Eaton	904
cross	952
redirect	1195
recross	1199

Volume V

Michael Giovannello, direct	1217
cross	1256
redirect	1264
recross	1266
Milton Julert, direct	1330
cross	1338
Albert C. Blevins, direct	1385
cross	1394
redirect	1426
recross	1427
Charles W. Sibold, direct	1433
cross	1442
redirect	1471
recross	1476

	Page
George J. Ryan, direct	1478
cross	1486
Volume VI	
Excerpts from Transcript of Testimony of Trial	
Robert E. Johnson, direct	69
cross	77
Thomas S. Kostecke, direct	107
cross	117
Joaquin Ramos, direct	140
cross	793
redirect	979
James Nauwens, direct	1031
Frank Jackson, direct	1107
cross	1210
Earl Simms, direct	1516
cross	1678
Walter Cacioli, direct	1702
Charles Mondo, direct	1713
cross	1718
Albert C. Blevins, direct	1738
cross	1740
George J. Ryan, direct	1748
Mickey DeHook, cross	1799
Joseph Morrin, direct	1812
George Eaton, direct	2164

	Page
Earl Simms, cross	1680
redirect	1686
Joseph Conforti, direct	2400
cross	2472
Harvey Tuerack, cross	2644
Fortunato DeLuca, direct	2660
Gerald Iino, direct	2746
David Samuel, direct	2769
cross	2832
Robert A. Henderson, cross	2908
direct	2886
Herbert Sperling, direct	3309
cross	3331
Robert A. Henderson, direct, rebuttal	3470

Volume VII

Summation of Mr. Feffer	3824
Charge of the Court	3898
Sentencing Minutes	1
Defendants Exhibit A — Article from The New York Times	E-1
Defendants Exhibit B — Article from the New York Post, April 16, 1973	E-9
Defendants Exhibit E — Photograph from Newspaper ...	E-12

	Page
Defendants Exhibit F — Article from the Daily News of April 17, 1973	E-13
Defendants Exhibit G — Photograph from Newspaper ..	E-17
Defendants Exhibit H — Photographs from Newspaper ..	E-18

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA

5 -vs-

73 Cr 460

6 JOHN CAPRA, LEOLUCA GUARINO, STEPHEN
7 DELLACAVA, ROBERT JERMAIN, GEORGE
8 HARRIS, EARL SIMMS, ALAN MORRIS,
JOSEPH MESSINA, and CARMELO GARCIA

9 Defendants
10 -----X

11 BEFORE: HON. MARVIN E. FRANKEL

12 New York
13 September 17, 1973
10:00 a.m.

14 APPEARANCES:

15 PAUL J. CURRAN, ESQ., United States Attorney
for the Southern District of New York

16 BY: GERALD A. FEFFER

and

17 LAWRENCE S. FELD, Assistant United States Attorneys

18 BARRY SLOTNICK, ESQ.

Attorney for Defendant John Capra

19 LAWRENCE FEITELL, ESQ.

Attorney for Defendant Stephen Dellacava

20 DENNIS D.S. McALEVY, ESQ.

Attorney for Defendant Leoluca Guarino

21 LEONARD J. LEVENSON, ESQ.

Attorney for Defendant Robert Jermain

22 JOSEPH STONE, ESQ.

Attorney for Defendant Alan Morris

23 EDWARD PANZER, ESQ.

Attorney for Defendant Joseph Messina

24 JOHN P. CURLEY, ESQ.

Attorney for Defendant Carmelo Garcia
25 - - -

1 dsgs

2

2 S T E P H E N D E L L A C A V A , called as a
3 witness on his own behalf, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FEITELL:

7 Q Now, in or about or after, shortly after October
8 28, 1971, did you come to learn that a certain quantity of
9 drugs, including heroin and cocaine, had been seized at a rail-
10 road station in Toledo, Ohio?

11 A Yes.

12 Q Did you learn more with respect to the particulars
13 of what kind of a parcel, if any, was involved in that seizure?

14 A It was a traveling bag.

15 Q Could you tell the Court and everybody else present
16 how you know there was a traveling bag that was seized on or
17 about that date in Toledo?

18 A Well, I don't remember dates exactly. What I do
19 know is that I purchased the bag that supposedly was met in
20 Toledo. I purchased it in Korvettes and I paid 30-something
21 dollars for it. I also put this narcotics in this bag, took
22 this bag and delivered it to Ramos.

23 Q Now, the money that you used to pay for the bag,
24 could you tell us where you got that money?

25 A From my own pocket.

1 Q Well, was that derived from you from any particular
2 source?
3

4 A Yes, sir. Well, it was like a kitty we had together
5 and we took it out of there.

6 Q Who made up that kitty, who helped you furnish the
7 funds for that kitty that you used?

8 A Furnish the funds or put it together, which one?
9 You mean the money?

10 Q This kitty fund that you had, who helped put money
11 into that fund?

12 A Mr. Guarino and Mr. Capra.

13 Q You knew them before that day; is that so?

14 A Yes, sir.

15 Q Now, could you describe the bag for us to your best
16 recollection?

17 A It was a Samsonite bag, black. It had two locks on
18 the end of it you turn this way (indicating). It's a lock
19 turn. Once you turn it in the straight position it would lock.

20 Q Now, you told us you bought it in Korvettes. Which
21 Korvettes did you buy it in?

22 A It's on Bruckner Boulevard in and about White Plains
23 Road, somewhere around there. I don't know the exact address.

24 Q Do you remember about what time you bought the bag
25 in connection with the later seizure in Toledo?

1
2 A Anywhere from ten to twelve o'clock in the morning.

3 Q How many days before the seizure was that, to your
4 best recollection, if you recall?

5 A I don't recall that.

6 Q Was it within a relatively short period before the
7 drugs wound up in Toledo?

8 A I don't remember that. How far that went, I don't
9 know.

10 Q Was it at or about the time that the delivery was
11 made to Toledo that you bought the bag?

12 A Well, it was within months at that time. I don't
13 know the exact date.

14 Q Now, with respect to packing the bag, did you prepare
15 that bag for shipment in any way or for delivery in any way?

16 A I took the bag and I bought the bag. Then I got the
17 narcotics which were in the car. I took the bag out of the
18 car, these bags, and put them inside the bag and locked the
19 bag and delivered it to Ramos.

20 Q Now, did you have any understanding -- Withdrawn.
21 Did you have any knowledge at that time as to where
22 the drugs were supposed to go?

23 A They way I understood, they were supposed to go to
24 Toledo, in or around Toledo. That's all I knew.

25 Q Did you know who was interested in those drugs in

1
2 Toledo or thereafter?

3 A No.

4 Q Did you know exactly -- Withdrawn.

5 Did you know ultimately where the drugs were supposed
6 to wind up?

7 A Toledo.

8 Q Now, did you have any discussion with Mr. Ramos
9 regarding what would happen, if anything, should the drugs
10 be lost in transit, whose risk or on which party the risk of
11 loss would fall?

12 A Are you asking me who would be responsible?

13 Q Who would be responsible.

14 A I would be responsible.

15 Q Could you tell us why you say you would be responsi-
16 ble or your end of the bargain would be responsible for the
17 loss of the drugs?

18 A Because the money I had gave to the person I bought
19 it off, he trusted me with the difference. In other words,
20 say the thing cost \$150, he would entrust me for \$2,000, what-
21 ever the amount comes to.

22 Q Had you been paid in full for this shipment by the
23 people who were ultimately to receive it?

24 A No, I wasn't paid in full.

25 Q Did you have an arrangement with or through Ramos

1 that the balance of the money that was due and owing would be
2 delivered to your end?
3

4 A Yes, sir. It if was okay and everything was all
5 right, the substance in the bag was okay and wasn't short
6 weight or not what it was supposed to have been, then they would
7 pay the balance through Ramos.

8 Q So was it your understanding that if the merchandise
9 was unsatisfactory in terms of its quality, that the persons
10 who had bought it would actually return it to you?

11 A That is correct.

12 Q So they had that right of inspection; is that so?

13 A Right.

14 Q With respect to short weight, if there was any short
15 weight, did they have a similar right to cancel the deal, so
16 far as you know?

17 A Yes.

18 Q To your knowledge were the drugs that you had
19 delivered to Ramos ever ultimately delivered to the persons
20 who were supposed to be at the end of the chain to receive it?

21 A Evidently not. It was in the paper that they were
22 arrested with it, whoever was arrested with it.

23 Q So was it your understanding that the deal was not
24 completed in terms of the delivery of the merchandise?

25 A It was not.

1
2 Q And when you heard that, did you understand that
3 the risk of the loss was now going to fall on you?

4 A Yes.

5 Q Yes or no?

6 A Yes.

7 Q And that you couldn't go against the people who were
8 supposed to ultimately pick up the merchandise and dispose of
9 it?

10 A I didn't know who the people were in the first place.

11 Q Whether you knew who they were or not, you knew that
12 there was some person or some group of persons at the end of
13 the chain who were supposed to receive the merchandise; isn't
14 that so?

15 A That's right.

16 Q Was it your understanding that it was these people
17 who were supposed to get up the price to pay for the merchan-
18 dise?

19 A Yes, sir.

20 Q Now, when you delivered the bag to Mr. Ramos, you
21 said you locked the bag?

22 A Yes, sir.

23 Q Now, with respect to your preparing this bag for
24 delivery to Ramos, for delivery onward to other people, had
25 you had an arrangement with the other defendants, Capra and

Guarino, about preparing this shipment? Do you understand that?

A If they had anything to do with it?

Q Yes.

A Yes. Well, we were all in accord with what was going to happen.

Q So when you went out to get the bag, was that part of your understanding and instructions, that you would work out that end of the enterprise?

A Yes.

Q You would take care of that detail; right?

A Yes.

Q Out of these funds which came out of the kitty furnished by themselves and you; right?

A Correct.

Q And had you had any discussion with them regarding the contents of the bag before you loaded up the bag?

A Yes, sir, we talked about the purchase of it, what went in it, what was going to go into it and who was going to get it.

Q Now, in your own mind, and I'm asking your state of mind, did you consider this merchandise that you put in that bag to be anyone else's property but your own?

A No. Couldn't be nobody else's until it was paid for.

2 Q To your knowledge it was never delivered, it was
3 never paid for in full; right?

4 A Right.

5 MR. FEITELL: No further questions.

6 CROSS-EXAMINATION

7 BY MR. FEFFER:

8 Q Mr. Dellacava, did you speak to Mr. Santangelo during
9 the recent break?

10 MR. SLOTNICK: Objection, Your Honor.

11 THE COURT: Objection on what ground?

12 MR. SLOTNICK: It is completely irrelevant to this
13 proceeding.

14 THE COURT: You are not his lawyer.

15 MR. FEITELL: I am going to object on this, Judge.

16 THE COURT: Overruled.

17 Q Did you speak to Mr. Michael Santangelo over the
18 luncheon recess?

19 A Did I speak to him?

20 Q Yes.

21 A I had something to say.

22 Q Did you discuss the suitcase?

23 A No.

24 Q You had no discussion with Mr. Santangelo about your
25 testimony here this afternoon?

1
2 A My testimony?

3 Q Yes.

4 MR. FEITELL: I'm going to object to this, Your Honor,
5 and I'd like to approach the bench to make a record, if
6 necessary. We can do this out of the witness' presence.

7 THE COURT: Sure, you may approach the bench. Come
8 over there.

9 MR. STONE: May I be excused if this is only
10 affecting these defendants?

11 THE COURT: Mr. Stone, I can't be co-counsel with
12 you. No, I'm not going to excuse you. This is a big pro-
13 ceeding and I don't know how long everything takes. Why don't
14 you bear with us, maybe some of it will be interesting.

15 MR. STONE: I'm sure of that.

16 (At the side bar.)

17 MR. FEITELL: I think it is entirely improper to
18 ask the witness whether or not he was present at any discussions
19 which his own counsel may have had respecting this subject
20 because we are offering this witness, at least I am, in
21 absolute good faith, under the severe stricture that he tell
22 the truth as he understands it.

23 THE COURT: You made an objection. What is the
24 ground?

25 MR. FEITELL: I don't think that this is probable or

reasonable or correct cross-examination. Unless counsel is going to make --

THE COURT: Next time you have an objection which has no content, just say you object.

MR. FEITELL: I want an offer of proof whether this is put in good faith and whether they are going to establish that they know Mr. Santangelo counseled this witness about it.

THE COURT: If it will elicit nothing, it will elicit nothing. I know the purpose. Overruled.

(In open court.)

Q Mr. Dellacava, again during the luncheon recess, did you have any discussion with Mr. Santangelo about your testimony here this afternoon?

A No.

Q None whatsoever?

A None whatsoever.

Q Have you ever discussed with Mr. Santangelo anything to do with the suitcase?

A No.

Q You never discussed the suitcase with Mr. Santangelo?

A No.

Q How long have you known John Capra?

A 10, 15 years. I don't know exactly.

Q How about Leo Guarino?

1
2 A Just as long or longer.

3 Q How long have you been dealing in narcotics?

4 MR. SLOTNICK: Objection, Your Honor. Sorry.

5 THE COURT: Sustained.

6 Q You want to describe the suitcase?

7 A It is black, it's made out of Samsonite, I think the
8 material is.

9 Q How big is it?

10 A One-suiter.

11 Q It is a one-suiter?

12 A That's what it sounds like to me, one-suiter.

13 Q And you are sure it is a Samsonite suitcase?

14 A I don't know the name. I mean that's what they make
15 it up out of.

16 Q It is a small one-suiter suitcase. Is that your
17 testimony?

18 A Yes, sir.

19 Q How much did you pay for this?

20 A \$30.

21 Q At Korvettes?

22 A At Korvettes.

23 Q What was the purpose of buying the suitcase?

24 A The purpose of buying it was to put this narcotics
25 in.

Q Have you done this in the past?

MR. FEITELL: Objection.

THE COURT: Sustained.

Q Have you ever purchased a suitcase with Mr. Capra and Mr. Guarino in the past?

MR. FEITELL: Objection.

MR. FEFFER: I think it is relevant to determine whether three people would buy a suitcase for any purpose.

THE COURT: I don't care about any purpose. Three people might or might not buy a suitcase to put narcotics in. I will sustain the objection.

Q Where did you give the suitcase to John Ramos?

A Where did I give it to him?

Q Where.

A I met him in the street.

Q Where?

A Country Club.

Q What is Country Club?

A It's part of the Bronx.

Q Where did Mr. Ramos live at that time?

A I don't know exactly. He lived in Country Club.

Q At that time?

A Yes, sir.

Q You are sure about that?

2 A Positive.

3 Q Where did you meet him on Country Club?

4 A In and around his area where he lived. I don't know
5 the exact street.

6 Q On the street?

7 A Yes, sir.

8 Q What time of day?

9 A At night time. I don't know what time.

10 Q Evening, late hours?

11 A Between six and eight.

12 Q Between six and eight. Describe the circumstances
13 of transferring the suitcase to him.

14 A With Mr. Ramos?

15 Q Yes.

16 A I pulled up in my car, he pulled up with his, took
17 out the package, gave it to him, and he went off.

18 Q Now, what was in the suitcase?

19 A There was narcotics.

20 Q What type of narcotics?

21 A Heroin.

22 MR. SLOTNICK: Objection, Your Honor.

23 THE COURT: Wait just a second. What is the ground
24 of the objection?

25 MR. SLOTNICK: Because this is a hearing that is

2 probative as to standing as to a suitcase, and I think we are
3 getting off base.

4 THE COURT: I thought it had already been brought out
5 on direct.

6 MR. FEEFER: I'm trying to determine exactly what
7 is in the suitcase. If he says he put narcotics in the suit-
8 case, I want to find --

9 MR. FEITELL: I object to the question. He keeps
10 calling it "suitcase." The witness said Samsonite. Now it has
11 been transformed into a two-suiter suitcase and it is getting
12 bigger and bigger as we go along.

13 THE COURT: I should think the bigger it is the more
14 you would care to establish your possessory interest in it.

15 Proceed.

16 Q What was in the suitcase?

17 A There was heroin and cocaine.

18 Q How much?

19 A Six kilos of heroin, half a kilo or kilo of cocaine.
20 I don't remember exactly.

21 Q How much money were you and Capra and Guarino
22 charging for this seven kilos of narcotics?

23 MR. SLOTNICK: Objection. Again the question goes
24 not to standing or possession but to business interests.

25 THE COURT: What is the relevance?

MR. FEFFER: He testified he has received a portion of the price for the suitcase and the contents therein. Then he testified further that without receiving the money in full he allowed narcotics -- and the Government will show that this narcotics shipment was of a similar value -- to go to an unknown individual.

THE COURT: You are on the interesting technical question of whether title passed and risk of a loss is attached to whom.

MR. FEFFER: That is correct.

THE COURT: Object'ion overruled.

MR. FEITELL: I take that as an offer of proof that the Government is going to produce it.

THE COURT: If you have objections, I'll rule. Please be seated and let's proceed.

Q Mr. Dellacava, what was the price that you were to receive for the six kilos of heroin and the one kilo of cocaine?

A The price I don't recollect exactly.

Q Approximately?

A Approximately, what I know is that the man handed me a bag of money when I handed him this bag of narcotics. It was about \$150,000, which was only a payment, a down payment.

Q You received \$150,000?

1
2 A That's right.

3 Q Where?

4 A In the same place.

5 Q In other words, Ramos gave you \$150,000?

6 A That's right.

7 Q How much were you charging for a kilo of heroin at
8 that time?

9 A I don't remember.

10 MR. FEITELL: I will object to this, the form of the
11 question, how much were you charging. I don't know whether it
12 has been established as to who was establishing prices and
13 whether or not this man was just an intermediary. The question
14 suggests a fact that is not yet established.

15 THE COURT: You mean it may turn out that he owned
16 the suitcase and not the contents of the suitcase.

17 MR. FEITELL: It may turn out he was an intermediary
18 in carrying the bag and had a limited interest and the financial
19 dealings with respect to the sale were established by other
20 persons.

21 THE COURT: Would you say it may turn out that his
22 interest in the narcotics was negligible or non-existent but
23 that he had a large interest in the suitcase?

24 MR. FEITELL: I'm not saying that at all. That's
25 quite another issue, Judge.

1 THE COURT: I just want to know what you are saying.

2 MR. FEITELL: I know where you are going and I'm not
3 going in that direction.
4

5 THE COURT: I want to know what you are saying and
6 why I should make this kind of distinction concerning the degree
7 of his interest.

8 MR. FEITELL: Counsel should find out first what his
9 participation was, if any, in the deal, before he puts the
10 question as to what he was charging, what he was going to get
11 on the delivery of this. We don't know what his participation
12 was.

13 THE COURT: Find out the degree of his participation.

14 MR. FEFFER: May I respond? This man has testified
15 that he was owned from Ramos a certain amount of money on these
16 narcotics. It certainly implies that the money was going to
17 come to this individual on the stand.

18 THE COURT: I know. I'd just as soon you stayed
19 away as much as possible from the details of what now appears
20 to be a large and admitted narcotics transaction, admitted for
21 purposes of this suppression hearing. But the objection on
22 behalf of this defendant and witness is that you must not stay
23 away from that and you must go into the details. So I'm
24 sustaining the objection and directing you to go into these
25 details. You can't have it both ways. If he feels his client's

best interests are protected by this exploration, and I don't see any injury to the Government's interest, I will rule in his favor.

MR. FEITELL: May I make a point for the record? I'm not trying to turn off this inquiry. I would like to have it proceed along more rational, precise lines. Too many things are assumed in counsel's questions.

THE COURT: I just sustained your objection.

MR. FEITELL: But Your Honor's riposte also suggests that I may be acting in a counteractive fashion to the purpose of my motion here, which I just don't agree with Your Honor on.

THE COURT: You may well be right. You do agree that I should sustain your objections.

MR. FEITELL: Please.

THE COURT: Okay.

Q Mr. Dellacava, you testified that you received in a paper bag \$150,000 or thereabouts; is that correct?

A Yes.

Q Now, do you know from your own knowledge what the balance was due on that narcotics?

A I don't recall the whole balance.

Q Who would know?

A Either Guarino or Mr. Capra.

Q Well, then, how do you know a balance was owed, then?

1
2 A Because there wasn't enough money to cover the whole
3 thing.

4 Q How much money would cover it?

5 A I don't know. I don't know if it's another 150 or
6 250. I don't know.

7 Q Who told you there was a balance?

8 A When I brought back the money -- I knew from the
9 beginning that there would be a balance.

10 Q How did you know that?

11 A Because he gave me the money on consignment, on the
12 idea that he would get the rest of the money.

13 Q Gave it to whom on consignment?

14 A Ramos.

15 Q Is it your testimony that narcotics in excess of
16 \$150,000 was transferred to an unknown customer and you were
17 willing --

18 A As far as I'm concerned.

19 Q And you were willing to assume that this individual
20 in good faith would --

21 MR. FEITELL: I object to the form of the question.
22 Unknown to him?

23 MR. FEFFER: He testified it was an unknown
24 customer. I'm not questioning these people here.

25 He testified, Your Honor, that the customer was

unknown to him.

THE COURT: Then you have established that. What is your question now?

Q Are you telling the Court now --

THE COURT: That's an argumentative question.

Q Did you entrust this unknown customer with the balance that was due you?

A I trusted -- what we did trust was Ramos. He was responsible for the rest of the money.

Q Did anyone tell you that this suitcase would be delivered back to you?

A If it wasn't what it was supposed to be.

Q Let's assume they were satisfied with the narcotics, did anyone tell you that the suitcase would be returned to you?

MR. FEITELL: I will object to this, Your Honor, as utterly hypothetical.

THE COURT: Overruled.

A Repeat the question, please.

Q Did anyone tell you that the suitcase would be returned to you if the customer was satisfied with the narcotics?

A Yes, sir, he told me if it wasn't what it was supposed --

Q I said if they were satisfied.

A If they were satisfied --

MR. SLOTNICK: I object. I think the witness should be allowed to answer the question.

THE COURT: Overruled. He is being allowed to answer the questions, not some other questions.

Were you told if the narcotics was okay you would get the suitcase back?

THE WITNESS: We would get the money or the suitcase back.

THE COURT: Either the money or the suitcase?

THE WITNESS: Yes.

Q So I understand you correctly, if you got the money you would not get the suitcase back. Is that correct?

A That is correct.

Q Mr. Dellacava, did you pay your source of supply for the narcotics at the time when you transferred the bag to Ramos, had you paid yet?

MR. FEITELL: May I have that question read back. I'm sorry.

(Question read.)

MR. FEITELL: I will object to that. It assumes a set of facts not previously established as to who was the person responsible for paying the source of supply.

THE COURT: I will allow it.

Answer the question, please.

2 A The question is if I paid the connection; is that
3 what you are saying to me?

4 Q Yes.

5 A Yes, they were paid.

6 Q They were already paid?

7 A They were paid part of it on the assumption that
8 everything was all right and they would get the rest of the
9 money.

10 Q Did you pay your source of supply or did somebody
11 else?

12 A I paid it.

13 Q You paid him. How much money did you pay him?

14 A I gave him around \$100,000.

15 Q And what was the balance due?

16 A I don't know. That I don't know. I don't remember
17 the balance.

18 Q But you paid \$100,000?

19 A I consummated the deal. We got together and talked
20 about it but we never finished how much he was going to get
21 because the deal was never really made.

22 Q You received, you say, \$150,000 when you transferred
23 the bag to Ramos; is that correct?

24 A Right.

25 Q Do you know what the price was that you were

charging at that time for a kilo of heroin?

MR. FEITELL: Objection.

THE COURT: On what ground?

MR. FEITELL: Beyond the scope of this inquiry.

THE COURT: Overruled.

A I don't remember the exact price.

Q Approximately?

A I don't know what the going rate was. I think it was 20 to 22 thousand; I don't know.

Q For a kilo; correct?

A Yes.

Q Is that what you were charging Ramos?

A No.

Q What were you charging Ramos?

A I don't know.

MR. SLOTNICK: Objection. There is no contention he was charging Ramos anything or that he had any relationship with Ramos other than a transfer.

THE COURT: Let me get straight. Do you have standing to be making objections on behalf of this defendant who, as I understand it, is represented by Mr. Feitell?

MR. SLOTNICK: I believe that this is a joint motion that we are proceeding upon, Your Honor. I have a client here.

1
2 THE COURT: Either you all have standing or nobody
3 has standing? I thought each was individually claiming
4 standing.

5 MR. SLOTNICK: As I gather the testimony from Mr.
6 Dellacava, there is a partnership here. As a result of that
7 I have a partnership in the standing motion, too, Your Honor.
8 As a result of that I indicate I have the right to make the
9 objections on behalf of my client for the purpose of this
10 standing hearing.

11 THE COURT: Okay. The Government doesn't dispute
12 that?

13 MR. FEFFER: No objection, Your Honor.

14 MR. FELD: No objection.

15 Q One more question, Mr. Dellacava --

16 THE COURT: Let me hear the question and I'll rule
17 on the question.

18 (Question and answer read back.)

19 MR. SLOTNICK: My objection is it has not yet been
20 proven that Ramos was being charged or Ramos had a partner-
21 ship interest. So the question assumes a state of fact not
22 in evidence.

23 MR. FEITELL: It assumes as fact that this witness
24 was the one who was charging the amount in question rather
25 than other persons, and we have been over that ground.

1 dsgrs.

Dellacava-cross

26

2 THE COURT: You can go over it again. I have the
3 impression that he himself paid the \$100,000 and he doesn't
4 remember how much was the rest, not because he never knew. He
5 seems to me to have been a principal in this deal, as he
6 describes it, and as the state of his knowledge or his role, I
7 don't have any problem on that for present purposes.

8 Now, as to whether Ramos was supposed to pay any-
9 thing, let's ask Mr. Dellacava. I had understood him to say
10 that Ramos was responsible not only for that payment but for
11 the rest of the money, and that's what my notes indicate.
12 But ask the witness again. Maybe my notes are wrong.

13 Q How much were you and Capra and Guarino charging
14 Ramos for a kilo of heroin in October of 1971?

15 MR. SLOTNICK: I'm sorry, Your Honor. I think
16 that's the same question I objected to.

17 THE COURT: Was Ramos to pay for this heroin or
18 cocaine or both?

19 THE WITNESS: The way the deal was, he was responsi-
20 ble for the load that was going to him and he was sending out
21 to some people that he knew. He was solely responsible for
22 it.

23 THE COURT: You expected to be paid by him?

24 THE WITNESS: By Ramos.

25 THE COURT: How much did you expect to get paid,

1 dsgs

Dellacava-cross

27

2 approximately, by him per kilo of heroin?

3 THE WITNESS: The impression I was under, we were
4 supposed to get back our money in double.

5 THE COURT: How much would that be per kilo of
6 heroin?

7 THE WITNESS: I don't know. About 30,000, I guess.

8 THE COURT: About 30,000.

9 THE WITNESS: I don't know exactly.

10 THE COURT: How much per kilo of cocaine?

11 THE WITNESS: About 20.

12 THE COURT: Next question.

13 Q Is it your testimony that you were paying 20,000
14 approximately per kilo of cocaine at that time?

15 A That was the going rate.

16 MR. SLOTNICK: I object to the testimony.

17 Q Didn't you say the going rate for heroin in October
18 was 20 or 22 thousand dollars?

19 A But it didn't mean I have to pay that.

20 Q I'm not saying that. Yes or no.

21 A I said the going rate was about 20 or 22.

22 MR. FEITELL: It has gone quite far afield as to
23 the ownership of the bag, how he got the bag and whether he
24 intended to relinquish possession. This is exactly what we
25 feared when we took so much time as to whether to put this

1
2 witness on the stand. He is having free rein to going all
3 over on this.

4 THE COURT: Just object to one question at a time
5 and I'll rule one at a time. Free rein objections don't help
6 me because the freer the rein you give me the less precision
7 I can give from my ruling. You object to this question?

8 MR. FEITELL: Yes, I object to this question.

9 THE COURT: On what ground?

10 MR. FEITELL: Beyond the scope of proper examination.

11 THE COURT: Now why do you claim it is within the
12 scope?

13 MR. FEFFER: Because Mr. Dellacava I believe stated
14 that the going rate was 20 to 22 thousand dollars. If you
15 multiply that times the number of kilos that were in that
16 suitcase, it would seem to reflect that Mr. Dellacava had
17 been paid in full and consequently the suitcase in Ohio
18 would no longer be of any interest to him or his partners.

19 MR. FEITELL: Judge, I never brought out how much
20 was paid for these items. That was brought out on cross-
21 examination. I objected to that. Your Honor let him go.
22 Now we are going on to becoming argumentative.

23 THE COURT: My notes of the direct examination,
24 Mr. Feitell, indicate that you went into some interesting
25 and, for me, somewhat technical questions of title and risk

of loss. It seems to me that implicit in those questions is who paid and who owed what to whom. If this seller had been paid for the heroin and the cocaine, a trier of the fact might be prepared to infer that he was willing to throw in the suitcase and that he bore no risk of loss. Your objection is overruled.

Q Mr. Dellacava, did you testify that the going rate of heroin was 20 to 22 thousand dollars in October of 1971?

MR. SLOTNICK: Objection, Your Honor. I see no relevance whatsoever as to the going rate.

THE COURT: Overruled.

Q Yes or no, Mr. Dellacava?

A I answered that to show that I really didn't know what it was. It was a going rate.

Q Approximately?

A Approximately about, I don't know.

Q Is it fair to say you charged your customers approximately 20, 22 thousand dollars a kilo in October?

MR. McALEVY: Objection, Your Honor, as to customers. We are limited to this one transaction and that was to Ramos, and now Mr. Feffer has said "customers."

THE COURT: I understand what you mean. I heard you. Sustained.

Q You mean to tell me that Mr. Ramos, is this your

testimony, was paying you \$8,000 above the going rate?

MR. FEITELL: I will object to the form of the question as to how Mr. Ramos was supposed to pay or whether indeed Mr. Ramos was indeed paying money out or was a participant in the transaction itself. Counsel should phrase his questions with greater particularity and he should also phrase his questions based upon what he knows of his interviewing with Mr. Ramos. I'm not sure that these questions are really based on factual knowledge that counsel has.

MR. FEFFER: Your Honor, I believe Mr. Dellacava has stated that Ramos paid him or was paying approximately \$30,000 a kilo and that the going rate was 20 to 22 thousand dollars.

THE COURT: Stop there. There is no jury here. You can argue what I should infer from that instead of arguing with the witness.

MR. FEFFER: No further questions.

THE COURT: Any redirect?

MR. FEITELL: Yes, Your Honor.

May we call for the bag, Your Honor?

THE COURT: Do you have the bag?

MR. FEFFER: No, Your Honor, we do not have the bag here.

THE COURT: It's not here.

MR. FEITELL: Since certain questions were asked about its dimensions, leaving Your Honor up in the air as to whether my client's description is correct --

THE COURT: It is one of the questions which has least aroused my curiosity so far. Go on to something else.

REDIRECT EXAMINATION

BY MR. FEITELL:

Q Do you know if Mr. Ramos had any interest, financial, in this particular transaction?

A The way this was set up, they was supposed to be a partner. He was supposed to be a partner. He made the deal, whatever people they were. He came over without no money, without nothing, said he can get so much money from people to pay so much for a certain amount of narcotics, and this is the way it was brought out. In fact, he was a partner because it was his deal.

Q Now, with respect to the mathematical computations --

A I'm not very smart mathematically.

Q How much education have you had?

A Seventh grade.

Q And in connection with this particular transaction, did you at any time ever sit down with paper and pencil and figure out dollars per kilo?

A No.

Q Did you do that?

A No.

Q Did you ever sit down at a later time and figure out what was short or missing in terms of money or what was still owing?

A No.

Q Was that your part of the obligation in connection with this transaction?

A No, it wasn't.

MR. FEITELL: No further questions.

THE COURT: Any recross?

MR. FEEFFER: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. FEEFFER:

Q Did Ramos tell you how the package would get to Cleveland, Ohio?

A He told me that he was going to take care of it. That's all. He was solely responsible.

Q So you have no idea how the package got to Cleveland?

A No, I don't.

Q How long have you known John Ramos?

A Five, six years.

Q Five, six years?

A Just about.

Q Where did you meet him?

A Met him through his wife Dolly.

Q When?

A I don't know exactly.

Q But as of October 1971 you knew him for approximately five years. Is that correct?

A No. Now it is five years.

Q Now, you mentioned a partner of Mr. Ramos that you dealt with. Who was his partner?

A Myself, Mr. Guarino and John Capra.

Q Ramos was a partner of yours?

A Of the four of us -- four of us were combined with this one deal.

MR. FEFFER: No further questions.

MR. SLOTNICK: May I ask one question of Mr. Dellacava?

THE COURT: Yes.

REXCROSS-EXAMINATION

BY MR. SLOTNICK:

Q Which of the partners were to arrange the delivery of the narcotics to Toledo?

A Ramos.

MR. SLOTNICK: Thank you.

2 THE COURT: Anything else, gentlemen?

3 All right, Mr. Dellacava, thank you.

4 (Witness excused.)

5 THE COURT: All right, gentlemen.

6 MR. SLOTNICK: Defendant Capra, please.

7 J O H N C A P R A , called as a witness on his own
8 behalf, after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SLOTNICK:

11 Q Mr. Capra, during the fall of 1971 did Mr.
12 Dellacava speak to you about a narcotics transaction relating
13 to John Ramos and Toledo, Ohio?

14 A Yes.

15 Q Could you tell us the context of that conversation?

16 A Well, supposedly more or less I had more knowledge
17 of that transaction than Dellacava.

18 Q Tell us what you know and what you did.

19 A John Ramos came to me. He told me, he says he can
20 get some money off some people in Cleveland, Detroit, Ohio,
21 around there, so much money and I can purchase narcotics for
22 him with it. I said yes, we could. And he in fact gave me --
23 not gave me in person, but told me he could get approximately
24 175 or maybe more, around there, for -- how much narcotics
25 could he get? In turn I took that up. We tried to figure

1 out the best of our knowledge and we come up with a certain
2 amount of narcotics to give him.
3

4 Q Now, did Mr. Ramos indicate to you that he was
5 going to arrange for a shipment of narcotics out of New York
6 State?

7 A Yes, he did.

8 Q Why did the narcotics go to Toledo?

9 A Well, we believed Toledo was a big town, a lot of
10 people, a lot of action, and it would possibly go through
11 unnoticed.

12 Q Who directed the delivery of the narcotics to
13 Toledo?

14 A Well, Ramos more or less directed it with us in
15 conjunction with it was going to Toledo. Now, we all sat
16 down and figured what would be the best way to get there.

17 Q Did you know where the narcotics, prior to its
18 leaving New York City, were ultimately to go to in Toledo?

19 A Union Station, checkroom, baggage room, whatever.

20 Q Checkroom of Union Station?

21 A Right.

22 Q Did you know at the time that the narcotics were
23 to be checked at the Union Station that if they were seized for
24 any reason whatsoever, that you would have to pay for them?

25 A Definitely.

1
2 Q Was there a sale consummated prior to their receipt
3 by the buyer?

4 A All they wanted was a partial payment down.

5 Q Would you tell me the arrangements?

6 A All right. I'll tell you the whole arrangements.
7 The arrangements was we would not give anything up unless we
8 got any money first, partial anyway.

9 Q That's known as front money; is that correct?

10 A That's correct. When we got the money, then we
11 proceeded to give the money, take the narcotics with the
12 assumption that if it is not what it's supposed to be or short
13 or bad, or whatever, the money would come back to those people
14 that put up the money for the narcotics. And we would get
15 the narcotics back and we would turn it back.

16 Q What was your understanding if the narcotics were
17 seized prior to the people receiving it in Toledo, Ohio?

18 A That's my responsibility because somebody, they
19 can't pay for what they don't get.

20 Q Therefore, in your own mind and in actuality, you
21 never relinquished possession of the narcotics and the suit-
22 case; is that correct?

23 A Never.

24 Q Now, you have heard Mr. Dellacava's testimony. Is
25 it substantially correct with regard to a partnership

arrangement?

A Yes, that is substantially correct; but to the point of the amount and figures and monies, he is not correct.

Q Now, Mr. Capra, if the heroin was seized prior to receipt or prior to actual receipt by the individuals up in the midwest, would you give the front money back?

A Excuse me?

Q You testified that the money you received was so-called front money or good-faith money; is that correct?

A Right.

Q If the heroin was seized prior to receipt by the individuals in the midwest, would you give that money back to those individuals?

A I would have to, yes.

MR. SLOTNICK: Your witness.

CROSS-EXAMINATION

BY MR. FEFFER:

Q Mr. Capra, did you instruct Mr. Dellacava to purchase a suitcase for transportation of the narcotics that you have referred to?

A Right.

Q And what was the purpose of the suitcase, in your mind?

A Well, to put the narcotics into it and have it

1 travel.

2
3 Q Now, how much was the narcotics worth that you sent
4 in that suitcase?

5 MR. SLOTNICK: I object at this point. I don't
6 think that's relevant to this type of hearing.

7 THE COURT: I will overruled the objection. There
8 is a lot of talk about title. I am not sure how important it
9 is. I'm not sure how enforcible the agreement would be to
10 give back the money if the narcotics was not delivered, but
11 it is all interesting and it sounds like property law that I
12 used to hear about. So let's hear about it.

13 MR. FEITELL: I have an objection, if I may, right
14 on the subject. The question is how much was it worth. The
15 issue before Your Honor is not how much it was worth but
16 whether or not it was paid for in full.

17 THE COURT: Fair enough. That may be the issue
18 but it can be gotten at by more steps than one. So I'll
19 allow the question.

20 Q How many kilos of narcotics were in that suitcase?

21 A Approximately seven, seven and a half, I don't
22 remember. I think it was six and a half of heroin and I think
23 a package of cocaine. I'm not sure.

24 Q At the time when the narcotics were placed in the
25 suitcase, had you paid your source of supply?

1 MR. SLOTNICK: Objection, Your Honor. That has
2
3 nothing to do with the standing issue as to whether they had
4 possession or not.

5 MR. FEFFER: I will withdraw it, Your Honor.

6 Q How much were you paying for a kilo of heroin in
7 October of 1971?

8 THE COURT: Why don't you go to the ultimate
9 question? How much was he supposed to get? Isn't that what
10 you are driving at?

11 MR. FEFFER: I was driving at two different things,
12 but I can take that route.

13 Q Mr. Capra, how much were you to receive for a kilo
14 of heroin?

15 MR. SLOTNICK: I would basically object to the
16 question again. The question is a factual question of
17 possession, not a question of economics or business relation-
18 ships.

19 THE COURT: Overruled.

20 Q In October of 1971?

21 A How much was I supposed to get?

22 Q For each kilo of heroin that was in that suitcase.

23 A Approximately 24, 22; around that. I don't recall.

24 Q In other words, Ramos was responsible for giving
25 you approximately 22, 23, 24 thousand a kilo; is that correct?

A No.

Q Approximately?

A No. You got it wrong. The idea is we went into a basic partnership and it was just his job to pick up the money.

Q Who was going to hand you the money?

A Johnny Ramos.

Q How much was Ramos supposed to give you for each kilo of heroin in that suitcase?

A Around 24, 23; around there.

Q 23, 24 thousand a kilo. Is that correct?

A Something around there.

Q Prior to the time that suitcase went to Toledo, you received or Mr. Dellacava received, your partner, \$150,000; is that correct? Approximately?

A I'm not too sure on that figure. I don't know if it was 100, 150.

Q Now it is 100 or 150.

MR. SLOTNICK: If Mr. Feffer wants to argue with the witness, objection. This is not correct form.

THE COURT: Overruled.

Q Approximately \$150,000?

A Could be 100.

Q Did you count the money?

1 THE COURT: Mr. Capra, are you saying you don't know
2 whether it was 100 or 150 thousand? Is that what you are saying?
3

4 THE WITNESS: Right.

5 THE COURT: Next question.

6 Q How much were you charging in October of 1971 for a
7 kilo of cocaine?

8 A Is that the same date --

9 MR. SLOTNICK: Objection.

10 A I told you the same price.

11 MR. FEITELL: How much did you charge, not how much
12 were you charging, a course of conduct relating to other
13 matters. The question goes too far.

14 THE COURT: Ask him about this.

15 Q How much was Mr. Ramos supposed to give you for the
16 kilo of cocaine that was in the suitcase, approximately?

17 A About 18,000 or so.

18 Q Now, is it your testimony that a suitcase worth
19 in excess of \$100,000 --

20 Yes, Mr. Slotnick?

21 MR. SLOTNICK: No, Mr. Feffer. I'm just rising.
22 You were about to finish your question. I was about to make
23 an objection but I will have the courtesy to wait for you to
24 finish your question.

25 Q Is it your testimony that this suitcase containing

1
2 in excess of \$100,000 worth of narcotics was delivered to you
3 to an unknown customer?

4 MR. SLOTNICK: Your Honor, I object.

5 Q I'm sorry, "by you," to and unknown customer; is
6 that correct?

7 A I never delivered it, no.

8 Q Well, did you know the customer who was to receive
9 these narcotics?

10 A No.

11 Q Did you know how the narcotics were supposed to get
12 to that customer?

13 A Qell, basically we spoke about it, right.

14 Q Can you explain that?

15 A More or less by train or bus or air.

16 Q Who was to take the bag of narcotics to Toledo,
17 Ohio?

18 A Johnny Ramos.

19 Q Did Mr. Ramos go to Ohio with the bag of narcotics?

20 MR. SLOTNICK: Objection, Your Honor. Irrelevant.

21 THE COURT: Why is that relevant?

22 MR. FEFFER: I'm sorry, Your Honor?

23 THE COURT: Why is that relevant to this hearing?

24 MR. FEFFER: Because the defendants are claiming that
25 at the time of the seizure in Ohio that that suitcase was theirs

1 THE COURT: I know they claim that. But why is
2 this relevant?

3 MR. PEPPER: I think, Your Honor, establishing how
4 the suitcase got there goes to show if they retained possession
5 at the time in Ohio or whether they relinquished possession,
6 which is ver important under the Brown case.

7 MR. FEITELL: I understand the words but I don't
8 understand the logic and I join in the objection.

9 THE COURT: The limit of counsel's comprehension is
10 not in Wigmore given on objections. Overruled.

11 What is your objection?

12 MR. SLOTNICK: My objection is the following: The
13 testimony indicates that Mr. Ramos who was a partner was
14 responsible for the transportation of the heroin to Toledo.
15 Does it matter whether Mr. Ramos himself brought it or whether
16 he had some of his agents bring it?

17 THE COURT: That is not the statement of an objection
18 either. That is a long recitation of a kind that I will ask
19 you to make hereafter at the side bar. Objection overruled.

20 MR. SLOTNICK: I apologize to the Court for that.

21 THE COURT: Don't apologize, but take heed of the
22 suggestion for the future.

23 MR. SLOTNICK: I will, Your Honor.

24 Q Do you know whether Mr. Ramos in fact brought the
25

suitcase containing the narcotics to Toledo, Ohio? Yes or no.

A To Ohio?

Q Yes.

A To my knowledge, no, I don't know if he brought it there.

Q But he was supposed to bring it there?

A Right.

Q What was the delivery man supposed to do with that bag of narcotics when he arrived in Toledo, Ohio?

MR. SLOTNICK: I object to the form of the question.

Q If you know.

MR. SLOTNICK: Same objection.

THE COURT: Overruled.

A What was he supposed to do with the bag?

Q Yes.

A I didn't -- that was the delivery man's job, to work out that end of it.

Q Do you know whether he was supposed to leave the bag in a baggage claim area, was that a possibility?

A Yes.

Q Now, is it your testimony now that a delivery man who was supposed to take a bag containing in excess of \$100,000 worth of narcotics and leave it in a delivery room for some unknown customer to pick up and at that point you

were responsible for that bag?

MR. SLOTNICK: I would object to the form of the question. If Your Honor wants me to be more specific, I will at the side bar.

THE COURT: I think it is an argumentative question and I will sustain it on that ground.

Q You testified that it was one of the possibilities for delivering this suitcase that it be left in a baggage claim area in Toledo, Ohio. Is that correct?

A Yes.

Q How would it get from the baggage claim area to the customer?

MR. SLOTNICK: That calls for a conclusion, speculation. That question is based upon speculation, and at this time I am constrained to object. I should have originally.

THE COURT: You are asking was there an understanding as to the course of its --

MR. FEFFER: Yes.

THE COURT: Overruled.

A That was also the job of the fellow who brought it there, to work that out. That was his responsibility. That was Ramos' responsibility.

Q If the narcotics were seized in Toledo or if they were destroyed in some manner, the loss would be yours; is

2 that correct?

3 A Right.

4 Q Now, you testified that if the narcotics were short
5 in the suitcase, that the entire shipment came back to you.
6 Is that correct?

7 A No, I never testified to that.

8 Q What would happen if the narcotics were short?

9 A Well, it would be up to the people that were getting
10 the delivery to do what they wanted with it, as far as maybe
11 balancing it out with money or return it or just ask for the
12 rest of the delivery.

13 Q Now, Mr. Capra, let's assume that there was a
14 shortage in the delivery of a half a kilo --

15 MR. SLOTNICK: I object to the form of the question.

16 Q Was it your understanding if that was the case that
17 you were to receive the entire shipment of narcotics back?

18 A That point was never discussed.

19 Q Did the buyer have the option to give you less
20 money because of the shortage rather than return the entire
21 shipment?

22 MR. SLOTNICK: I think we have delved into this area.

23 THE COURT: Yes, but I will allow it.

24 A Excuse me, I don't know where we are.

25 Q Did the unknown customer at the end, assuming he

received the narcotics and was a half-kilo short --

MR. FEITELL: I object to the question, "unknown customer." Unknown to whom?

THE COURT: Mr. Capra.

MR. FEITELL: At least it should be put that way.

THE COURT: Well, I understood it to mean that.

Did you understand it to mean that?

THE WITNESS: I don't understand some of the questions. It is at Johnny Ramos' point or beyond that point. It is not clear to me.

THE COURT: All right.

Q If the customer in Ohio notified you that there was a shortage, was there some understanding that he would send back the entire shipment?

A Well, that would be very argumentative, first of all.

Q Answer the question.

A That's the only answer I can give you. He just can't say it's short and deduct so much money. He just can't do that.

Q What could he do?

A I don't know what he could do. He could try to do a lot of things. Like you say, he can try to short the money. That would be an argument in itself.

1 Q You expected to receive the money for the narcotics
2 that were sent to Toledo. Is that correct?
3

4 A Right.

5 Q In fact, you had received either \$100,000 or
6 \$150,000; is that correct?

7 MR. SLOTNICK: I'm sorry, Your Honor, I object to
8 the cross because there is no direct examination on that.

9 THE COURT: Overruled.

10 A Would you give me that question?

11 Q You expected to receive a balance that was due
12 to you?

13 A Right.

14 Q From the shipment in Toledo; is that correct?

15 A Right.

16 Q What was that balance?

17 MR. SLOTNICK: I object, Your Honor. I don't think
18 that is relevant.

19 THE COURT: Overruled.

20 A I think the balance was in the area, to the best of
21 my recollection, of about \$25,000, \$20,000. Around there.
22 Something to that effect.

23 Q Did John Ramos get a certain cut?

24 A Yes.

25 Q For delivering the narcotics to Toledo, Ohio?

1 A Yes. One-fourth of whatever the profit would have
2
3 been at that time.

4 Q One-fourth?

5 A Yes.

6 Q How did you split up -- Withdrawn.

7 Who was to get the remaining three-fourths?

8 A Guarino, me, and Dellacava.

9 Q Equal shares?

10 A Right.

11 Q Did you ever have a conversation in October of
12 1971 at a club in the Bronx called the Havermeyer Club with
13 Dellacava and Guarino and others about this shipment of
14 narcotics to Toledo, Ohio?

15 MR. SLOTNICK: Your Honor, I object to the form of
16 the question.

17 THE COURT: Overruled.

18 Q Yes or no, Mr. Capra?

19 A Possibly.

20 Q Possibly?

21 A Yes.

22 Q Isn't it a fact, Mr. Capra, that you have been
23 shown transcripts and have heard recordings of a conversation
24 between you and Guarino and others in the Havermeyer Club in
25 1972 in October?

1 MR. FEITELL: I will object to this, Your Honor,
2 because those transcripts, for whatever they are worth, Your
3 Honor hasn't ruled upon their admissibility or useability or
4 reliability.
5

6 MR. SLOTNICK: Or credibility or audibility.

7 MR. FEFFER: I was asking the defendant whether he
8 heard tapes.

9 THE COURT: Maybe there are more disjunctives here.
10 Overruled. Answer the question.

11 A I received a transcript and received the tapes
12 but the tapes, I can't understand the tapes at all.

13 Q So it is your testimony, Mr. Capra, that the tapes
14 are completely incomprehensible to you. Is that your
15 testimony?

16 A 80 percent of it, yes.

17 Q There is no portion on that tape where you have a
18 discussion relative to Joseph Messina transferring these
19 narcotics to Toledo, Ohio?

20 A I never said that.

21 MR. SLOTNICK: Objection. I think the question is
22 asked in bad faith because I have seen the transcript and
23 listened to the tape and I ask the Government to withdraw
24 the question.

25 MR. FEFFER: The answer is yes or no, Your Honor.

1 days

Capra-cross

51

2 THE COURT: Wait a second. Are you conceding the
3 question is asked in bad faith?

4 MR. FEFFER: No, Your Honor, of course not.

5 THE COURT: And you are saying it is?

6 MR. SLOTNICK: That is correct. If the Government
7 would produce a copy of the transcript, perhaps we can step
8 up to the side bar.

9 THE COURT: Let's see the transcript.

10 MR. FEFFER: I don't have it here, but I can come
11 back to that.

12 THE COURT: Be sure you come back to it.

13 Q Did you have a conversation at the club with
14 Guarino and others relative to the transfer of narcotics to
15 Toledo?

16 A At the club?

17 Q Yes.

18 A Might have, yes. Probably.

19 Q And isn't it the fact that you discussed the
20 transfer out there in some detail?

21 A Well, like I says again, very possibly, yes.

22 Q Now, did you not name the individual in the course
23 of this conversation who transported the narcotics to Toledo?

24 MR. SLOTNICK: Your Honor, I object, because if
25 Your Honor will see the transcript you will realize --

1
2 THE COURT: This has nothing to do with the
3 transcript.

4 MR. SLOTNICK: It certainly does.

5 THE COURT: Overruled.

6 A Could I hear that question again?

7 MR. FEFFER: Read it back.

8 (Question read.)

9 A I heard the name, yes.

10 Q Who was that?

11 A Who was what? Who told me?

12 Q The name.

13 A The name I heard?

14 Q The name of the person who transferred the narcotics
15 to Toledo.

16 A J. Messina.

17 MR. FEFFER: No further questions.

18 REDIRECT EXAMINATION

19 BY MR. SLOTNICK:

20 Q Did you know on October 2, when this alleged
21 conversation took place, who actually transferred the
22 narcotics to Toledo?

23 A No.

24 MR. SLOTNICK: No further questions.

25 RECROSS EXAMINATION

BY MR. FEFFER:

Q Mr. Capra, is it your testimony now that you do not know who transported the suitcase to Ohio?

MR. SLOTNICK: Asked and answered, Your Honor.

THE COURT: Overruled.

Q Is that correct?

MR. FEITELL: I will object to this unless we fix a point in time as to that knowledge. Now, ever? At what point? At the time at Havermeyer? Before?

THE COURT: First let him answer the question in general.

A In general, as of now? I still don't know who did it.

Q You don't know who did it?

A No.

Q Was the person who delivered the suitcase, was he supposed to be reimbursed for expenses for going out to Toledo, Ohio?

A Yes.

Q How much money?

A Oh, no, no, excuse me. Nobody was supposed to be reimbursed for that. That was John Ramos, that is what his end was coming to. When we divided up our monies, his end was supposed to be taken care of because he was delivering

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dsqs

Capra-redirect

54

the narcotics.

Q Was he supposed to find somebody else to transport the narcotics?

A No, that was his job to do that, to deliver the narcotics.

Q His job was to take it there himself?

A Right.

Q How long have you known John Ramos?

A I don't know. Five, six years maybe.

Q How well do you know him?

A I know him pretty well.

Q Did you ever socialize with him and his family?

A Yes.

Q Did you ever go to town with Ramos or to clubs, that sort of thing?

A Yes.

MR. FEFFER: No further questions.

THE COURT: All right, Mr. Capra.

(Witness excused.)

THE COURT: Let's take about seven or eight minutes and then we will continue.

(Recess.)

MR. McALEVY: I call Mr. Guarino to the stand, Your Honor.

2 L E O L U C A G U A R I N O , called as a witness on
3 his own behalf, after being duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McALEVY:

7 Q Mr. Guarino, I direct your attention back to
8 October of 1971. During that time did you enter into a
9 partnership with three other people?

10 A Yes, I did.

11 Q Who were these people?

12 A Mr. Capra, Mr. Dellacava, and Mr. Ramos.

13 Q Now, with respect to those three individuals, which
14 one of them came to you with an offer?

15 A Mr. Ramos.

16 Q And what was the offer Mr. Ramos had?

17 A He wanted to make a deal with some people out of
18 town. I was never clear on exactly where or who the people
19 were. And he wanted to make partial payment for some drugs.
20 I told him the only way I would enter into a deal like that
21 was if I went into partnership with him on the profits.

22 Q Did you in fact enter into a partnership with Mr.
23 Ramos?

24 A Yes, I did.

25 Q Now, were, to your knowledge, any drugs delivered

to Mr. Ramos?

A Yes, they were, to my knowledge.

Q Now, with respect to a payment of those drugs, were you paid in full at the time these drugs were delivered to Mr. Ramos?

A We were never paid in full to my knowledge.

Q There was a balance due, was there not?

A Yes.

Q Now, do you know from your own knowledge who took those drugs to Toledo?

A They were in the possession of Mr. Ramos and I presume that Mr. Ramos delivered the drugs.

Q As part of this partnership agreement, wasn't it a fact that that was one of Mr. Ramos' duties?

A Correct.

Q Now, did it matter to you whether or not Mr. Ramos delivered the drugs to Toledo or one of his agents delivered the drugs to Toledo?

A I don't care who delivered them and I don't know where they were being delivered.

Q You have heard some figures with respect to monies. Do you know exactly how much drugs were given to Mr. Ramos?

A I'm not sure. I think it was six and a half, maybe seven and a half. I'm not sure.

2 Q Is that the total drugs?

3 A Total.

4 Q Do you know how much was divided with respect to
5 cocaine and how much was divided up to heroin?

6 A Either six and a half heroin or five and a half. At
7 this point Mr. Ramos -- that was left up to him. He was in
8 charge of that aspect and I don't know what happened.

9 Q Let me ask you this: At the time you had this
10 partnership agreement with Mr. Dellacava and Mr. Capra and
11 Mr. Ramos, I take it you trusted all three equally?

12 A Correct.

13 Q And you trusted Mr. Ramos back in the latter --
14 I'm sorry, during the entire month of October, 1971, did you
15 not?

16 A Correct.

17 Q Now, you have heard the other counsel and the
18 Government ask different questions with respect to who actually
19 owned those drugs that were found in Toledo, did you not?

20 A Yes.

21 Q I want to ask you -- Strike that.

22 With respect to what you felt in your mind back
23 in October of 1971, who was responsible for those drugs until
24 the entire amount of money, as agreed upon, was paid?

25 A The four partners.

Q And if anything happened to those drugs, I don't care whether they were seized or whether they were destroyed, who would stand the loss with respect to that?

A The four partners.

Q That was your agreement?

A Yes.

Q And that was your state of mind?

A Correct.

Q Were you at any time, either you or your partners, paid in full as per the agreement you all had together?

A No.

Q Is it your testimony that you did not know to whom Mr. Ramos had agreed to ultimately dispose of the drugs with?

A Correct.

Q That was his business?

A I never inquired.

Q Your part of the partnership was to produce the drugs, give them to Ramos for the ultimate final sale?

A Correct.

Q And that sale was never materialized, was it?

A Correct.

Q There was still a balance due and owing the last time you saw those drugs?

A Correct.

Q With respect to any conversation you might have had after October of 1971, more particularly the next year, did you later learn how the drugs got to Toledo a year from then?

A It has never been clear in my mind. Ramos' wife contended that during the trial J. Messina's name was mentioned. She looked through the phone book, there was a list of 200. She tried to track down the person that was out there at the same time. It's never been clear in my mind just exactly how the drugs went to Toledo. I presume Ramos did it.

Q That was part of his agreement, was it not?

A Yes.

Q Did Ramos ever tell you he would bring the drugs themselves?

A He wasn't that emphatic but it was his assignment to bring the drugs to whatever destination. I never questioned how.

Q It was his assignment to get there one way or the other?

A That's right.

Q And you weren't concerned with who brought it there as long as they got there?

A As long as they got there safely.

MR. McALEVEY: No further questions.

CROSS-EXAMINATION

BY MR. FELD:

Q Mr. Guarino, you know the defendant John Capra in the courtroom; is that correct?

A Correct.

Q How long have you known him?

A All his life.

Q Do you know the defendant Stephen Dellacava?

A Correct.

Q How long have you know him?

A Practically all his life.

Q And you know John Ramos?

A Correct.

Q And how long have you known him?

A Since 1959.

Q Now, during the period of time prior to October of 1971, were you in a partnership with these individuals?

MR. McALEVY: Objection, Your Honor.

THE COURT: Yes, what is the ground?

MR. McALEVEY: Irrelevant, prejudicial. Whatever he had to do before October of '71 is absolutely irrelevant to this proceeding.

MR. FEITELL: Same position, Your Honor.

THE COURT: Overruled.

MR. SLOTNICK: I join in the objection of relevancy,

1
2 Your Honor.

3 THE COURT: Overruled.

4 A Yes, we were partners in Stephen's air conditioning
5 in the bar at 105th Street and in certain gambling activities,
6 yes.

7 Q Were you a partner in anything else?

8 MR. SLOTNICK: If I may, this has been brought up
9 earlier in the proceeding. This is a proceeding in which we
10 are attempting to establish, or at least the Government --
11 I'm not sure who has the burden at this point, someone has to
12 establish standing or someone has to negate standing. This
13 is not an exploratory or discovery proceeding for the Govern-
14 ment. I say the prior association is irrelevant and it is
15 being done --

16 THE COURT: Mr. Slotnick, at some time we are going
17 to explore more carefully than we have your constant references
18 to the motives of your brothers at the bar who work for the
19 Government. I say that with some deliberation because it
20 appears to me that you are speeding to discern bad motives,
21 and I want those things recorded. They are recorded, because
22 I think it regrettable when lawyers start doing that,
23 especially when they do it too quickly. Now, it seems to me
24 that the specific question that is before us is directly
25 relevant to the assertion of Mr. Dellacava that these men

were partners and they had a kitty, and I think the Government is entitled to ask it.

Objection overruled.

Answer the question, please.

A Yes. As I said, we were partners in Stephen's air conditioning, Stephen's bar and certain gambling activities in a club we owned, and in certain movie activities. We were partners in all those activities, yes.

Q Were you partners in narcotics?

A We were partners in the single narcotic deal that's being investigated now.

Q And you never had any agreement with any of these persons concerning any other narcotics --

MR. McALEVY: Objection to the form of that question.

MR. FEITELL: Your Honor previously questions properly, with due respect to counsel's objection, entered into the are of the kitty. We got the answer to that. We know how the kitty came, how it developed.

THE COURT: I didn't get all that. Your objection is overruled.

Now what is yours?

MR. McALEVY: Judge, I think if you recall before the luncheon break today I asked you if the Government

would be -- what latitude would be given the Government with respect to this proceeding. I was quite hesitant in putting my client on the stand. I think they should be entitled to ask questions to the narrow point as to whether these men had standing in October and any other activities with respect to drugs are absolutely immaterial with respect to this transaction or what happened as a result of the transaction. I think the Government should be confined with respect to this partnership.

THE COURT: Why is the question relevant?

MR. FELD: Your Honor, I think it is relevant for this reason: We have assertions here about a partnership agreement suddenly springing up, and pursuant to that partnership agreement, a suitcase was bought from funds from a kitty which apparently anteceded that --

THE COURT: Objection overruled.

MR. SLOTNICK: Will the record indicate my joining in the objections of my brethren.

Q Did any of your activities with Dellacava, Capra, or Ramos, prior to October 1971, relate to narcotics?

A There may have been discussions with Ramos and myself, and Mr. Capra, Ramos and myself. Prior to October you are speaking of now?

Q Prior to October.

THE COURT: You didn't hear the question. He asked you whether any of the partnership arrangements or whatever you call them, relationships between you, Capra and Dellacava, related to narcotics.

MR. SLOTNICK: I renew my objection. It is irrelevant and I say this is discovery rather than relevancy to this hearing.

THE COURT: Answer the question, please.

THE WITNESS: Could I please have it read to me again?

THE COURT: Yes.

(Question read.)

A My conversations with Ramos related to narcotics, Your Honor, and he may have assumed I was acting as an agent for Dellacava and Capra.

THE COURT: That's not what he asked.

THE WITNESS: I don't understand.

THE COURT: Did you have any dealings with them as partners, or whatever you call it, relating to narcotics before October 1971?

THE WITNESS: No, I didn't.

THE COURT: All right.

1
2 Q Now, you listed a number of activities in which you
3 say you were partners with Mr. Dellacava, Mr. Capra, and Mr.
4 Ramos. Is that correct?

5 A Correct.

6 Q Did you have a written partnership agreement with
7 respect to any of those activities?

8 A Did I have a written partnership agreement?

9 Q Yes, sir.

10 A In my way of life we don't have written partnership
11 agreements on anything.

12 Q So the answer to my question is no, you didn't?

13 A Correct.

14 Q As far as you know, Mr. Capra and Mr. Dellacava
15 and Mr. Ramos didn't have a written partnership agreement in
16 any of the activities that you specified?

17 MR. McALEVY: Objection, Your Honor; how would he
18 know what they had?

19 THE COURT: He is just asking as far as he knows.

20 A As far as I know, I don't know.

21 THE COURT: He doesn't know.

22 Q Now, you have heard the testimony of Mr. Dellacava
23 today in this matter; is that correct?

24 A That is correct.

25 Q And you heard him refer to a kitty from which

1 funds were withdrawn to pay for the suitcase in question; is
2 that correct?
3

4 A Correct.

5 Q Where was this kitty located?

6 A Well, you see, Mr. Dellacava's description is a
7 little different than my own, Counsel.

8 Q To the extent that his description differs from
9 yours, tell us what your description of the kitty is.

10 A If we had to make any expenditures in conjunction
11 with any of our businesses, he would relate it back to us and
12 we would reimburse him. That's the extent of the kitty we
13 had. Any expenditures made in pursuance of any of the
14 businesses we had, he would convey back to myself or Capra
15 and we would reimburse him.

16 Q Where was this kitty located?

17 A There was no such kitty.

18 Q Was there a bank account kept from where these
19 funds came?

20 A No.

21 Q Was there a safe deposit box where this cash was
22 located?

23 A No.

24 Q Is it your testimony that in respect to all of
25 these activities that you have told us about, your method of

operation was to have Mr. Dellacava make expenditures out of his pocket and then he would be reimbursed by you?

MR. McALEVY: Objection to the form of the question, Your Honor. That's not what the man testified to. I think the record will bear that out.

MR. SLOTNICK: It has also been beaten to death.

THE COURT: It has either been beaten to death or has not been testified at all. Would you like to negotiate a deal and let me know what the objection is?

MR. SLOTNICK: I wouldn't like to negotiate.

THE COURT: Do you agree with Mr. McAlevy that it is inconsistent with the prior testimony?

MR. SLOTNICK: I do not agree with Mr. McAlevy as to that.

THE COURT: Let me hear the question, please.

(Question read.)

MR. McALEVY: I repeat my objection.

THE COURT: He is being asked, he is not being told. Yours is overruled, Mr. McAlevy, so is Mr. Slotnick's.

THE WITNESS: What was the question again?

(Question read.)

A No.

Q Could you describe the method of operation that Mr. Dellacava would use in connection with your partnership

activities when it came to expending monies for the benefit of the partners?

A I think I just explained it, but I'll do it once again.

Whatever expenditures were necessary in the pursuance of whatever business ventures we entered into jointly was laid out by any one of us on a particular occasion and they were later reimbursed.

Q By the other partners?

A Correct.

Q In these various interests in which this partnership existed, did everybody have an equal share?

MR. McALEVY: Objection to this. I think we should be confined to this particular partnership. If I recall, Your Honor denied Mr. Feffer's motion along these same lines and now I say Mr. Feld is getting in the back door.

THE COURT: Which motion of Mr. Feffer's did I deny?

MR. McALEVY: I believe, Your Honor, when Mr. Feffer made an application before the start of testimony this afternoon he also asked if he could make inquiry with respect to the bar and the air conditioning. You denied that. You said we will take it up at a later time. That is what Mr. Feld is asking in direct contradiction to the Court's order.

THE COURT: What about that, Mr. Feld?

MR. FELD: I will withdraw that, Your Honor. I will proceed in another way.

Q Now, it is your testimony that there came a time when you entered into a partnership with respect to this suit-case that was ultimately delivered to Ohio?

A Correct.

Q I take it from your testimony that there was no written partnership agreement about it?

A Correct.

Q It was done orally?

A Correct.

Q And could you tell us when you sat down with your other partners or how this deal came about?

A Well, I don't recall the exact date but Mr. Ramos first approached me, gave me the proposition. I consulted my other partners separately and we decided to enter into this agreement only insofar as we would become partners in the overall deal, since the drugs were not to be paid for fully. They were to be paid for partially. So since we were supposed to take a disproportionate risk, we felt we should have an interest in the overall profit situation.

Q Let me see if I understand your testimony correctly. Mr. Ramos came to you?

A Correct.

1 Q And offered you a proposition concerning narcotics.
2
3 Is that correct?

4 A Correct.

5 Q Now, how far before October of 1971 did this
6 discussion take place?

7 A Not too long. I can't remember exactly, but not
8 too long.

9 Q Would you say approximately a month or two?

10 A I don't think it was that far.

11 Q It was less than a month or two?

12 A I think so.

13 Q A matter of weeks; is that correct?

14 A I think so.

15 Q Now, did he speak to you about this over the phone?

16 A No.

17 Q He met you in person?

18 A Correct.

19 Q And could you tell us where that meeting took place?

20 A Could have been any one of a number of places.

21 Ramos was a very close friend of mine.

22 Q You don't recall the specific place?

23 A I don't recall.

24 Q Was anyone else present when he made this propo-
25 sition to you?

1 A I believe he came to me personally. This is what
2
3 I recall.

4 Q But was anyone else present during the course of
5 that meeting?

6 A I don't recall, no.

7 Q And could you tell us to the best of your recol-
8 lection what he said to you and what you said to him in
9 respect to this proposition and in respect to the partnership
10 proposal?

11 A He didn't suggest the partnership proposal. I
12 suggested it. He came to me and told me he had a situation
13 out of town. I never asked him who the people were involved,
14 I didn't care to know who the people were. And he told me
15 he had X amount of money they were able to put up for a
16 certain amount of narcotics and that it wasn't to be paid
17 for in full, from the amount of money that he had. I
18 suggested that if it wasn't to be paid for in full, I doubted
19 very much whether he could have the narcotics. Then upon
20 consulting my two associates we arrived at the conclusion
21 that we would give him the drugs if we could retain a partner-
22 ship interest in them so that we would get a piece of the
23 overall profit.

24 Q How much money did he say the buyers were going to
25 give you, that they had given him as front money?

1 A Well, believe it or not, it is a little difficult
2 for me. It was in the area of \$100,000. Now I've heard other
3 testimony, but I disagree with it. I think it was about
4 \$100,000. It may have been a little more. I really don't
5 recall. I recall \$100,000.

6 Q Did he tell you that he had the money or that
7 \$100,000 with him?

8 A Not at that time, no.

9 Q Did he tell you he was going to get the \$100,000
10 from the buyers?

11 A Correct.

12 Q And to whom was the \$100,000 down payment, according
13 to your testimony, to be delivered to? Who was he going to
14 deliver it to, you personally?

15 A No. We didn't work that out initially.

16 Q Was there anything else that you discussed with him
17 in connection with this deal in Toledo?

18 A Nothing at all.

19 Q Did he specify who the buyers were to you?

20 A No.

21 Q Did he suggest to you that they would come from
22 Detroit?

23 A No.

24 Q Did he suggest to you that the buyer was Alan Morris?

1 MR. McALEVY: Objection, Your Honor. This is
2
3 definitely becoming a fishing expedition without question..
4 He is starting to throw names around of the defendants. I
5 don't think it is fair. We have a narrow subject with respect
6 to a partnership. I think he has gone far afield. He is
7 throwing names that never even came close to coming before
8 this Court on direct examination.

9 THE COURT: Let me see if I understand it. As to
10 a fishing expedition, I don't follow it. I assume by now the
11 Government has by now some theory of this case as to who
12 the buyer was, and so on, and is not just trying to find out
13 from Mr. Guarino.

14 Secondly, I assume that none of this may be used
15 by the Government in its case-in-chief, certainly in its
16 case-in-chief.

17 Thirdly, there has been testimony from at least two
18 of the defendants that have been on the stand that the name
19 of the buyer was unknown to them. I think the Government
20 is allowed to test that, but let me ask Mr. Feld, what is
21 the purpose of this question?

22 MR. FELD: Well, apparently the defendants' claim
23 here about standing rests on a conception of whether title
24 passed and to whom the bag was supposed to go and who had the
25 risk of loss, and matters like that, and we have so far the

1 customer has not been identified. I think we are entitled to
2 explore that as to who the customer was for this, and what
3 responsibilities, if any, he was to have or in fact did have
4 to the best of the knowledge of this witness.
5

6 THE COURT: Well, do you contend that they were
7 different arrangements under the Uniform Commercial Code or
8 otherwise as to the passage of title and are you going to get
9 at them through the identity of this purchaser? Is that
10 what you are saying?

11 MR. FELD: I hadn't thought in terms of the
12 Uniform Commercial Code, Your Honor.

13 THE COURT: Apart from that, is the name of the
14 purchaser going to help you on the questions you specify?

15 MR. FELD: It may well be, Your Honor.

16 THE COURT: How?

17 MR. FELD: Because we have other evidence that
18 suggests that the buyer in this case was the one who was
19 responsible for the suitcase once it arrived.

20 THE COURT: Isn't that evidence to suggest who that
21 buyer was?

22 MR. FELD: Yes.

23 THE COURT: On that representation, solely for the
24 purpose of this suppression hearing and on the question of
25 standing, and having heard that there was this detailed

1 agreement and having in mind that an agreement presumably
2 has two sides, I will allot it.

3
4 MR. McALEVY: One further point, Your Honor. Just
5 in my understanding of the question asked on cross that he
6 didn't know who the buyers were and now Mr. Feld says Mr.
7 Morris. He already answered he doesn't know who the man was.

8 THE COURT: Mr. McAlevy, I don't know how to
9 phrase this, but surely you know better than that, in dealing
10 with cross-examination. Surely you know that one answer by
11 a hostile witness does not conclude a subject and that on
12 cross-examination counsel is allowed to press a little bit.

13 Overruled. Please follow that principle even if
14 it is erroneous in some jurisdictions, for the remainder of
15 this proceeding.

16 MR. STONE: I will join for a separate reason. I
17 feel that Mr. Morris is not set forth in any motion as far
18 as this hearing is concerned and for the Government to elicit
19 evidence which may not be binding upon these defendants, but
20 which could furnish further leads against Morris would not be
21 fair as to Morris. I grant you that Simmons provides pro-
22 tection for the defendant who testifies, but it doesn't
23 provide protection for Morris.

24 THE COURT: Let me say for openers on that that
25 it is another subject, that if Mr. Feld is perfectly clear

1 that this is not going to supply any leads against Morris, and
2 if he is prepared to establish that later, he may go ahead.
3 If he is not, this may be one way to get your client relieved
4 of other problems later on.
5

6 What about that, Mr. Feld?

7 MR. FELD: The purpose of the question is --

8 THE COURT: Whatever the purpose is, will you be
9 able to show someday that anything you may claim to be able
10 to prove against the defendant Morris was not given to you
11 or illuminated directly or indirectly by what you are trying
12 to elicit here?

13 MR. FELD: Yes, Your Honor.

14 THE COURT: We will leave it at that, Mr. Stone.
15 Now, the question, Mr. Feld.

16 MR. FELD: May we have it read back.

17 THE COURT: If the reporter can find it, yes.

18 (Question read.)

19 A No.

20 Q The answer is no?

21 A That's right, no.

22 Q Did you ever have a discussion with Mr. Ramos as
23 to how he was going to have the narcotics transported to the
24 purchaser?

25 A No.

1
2 Q To your knowledge did he ever have such a conver-
3 sation with respect to your other partners, Mr. Capra and
4 Mr. Dellacava?

5 A I don't know.

6 Q And you were not there when this suitcase was opened
7 up in Ohio; is that correct?

8 A No.

9 Q Now were any of your partners there. Is that
10 correct?

11 A Not to my knowledge.

12 Q Including Mr. Ramos?

13 A He may have been. I don't know.

14 Q And I take it that your partnership activities
15 did not embrace any ownership interest in the Penn Central
16 Union Railroad Terminal, did it?

17 A What was that?

18 MR. SLOTNICK: I don't think the record needs an
19 objection to that question. I will ask you to sustain it.

20 THE COURT: I will sustain it.

21 Q Now, did you or Mr. Capra or Mr. Dellacava have
22 in your possession at the time Mr. Ramos made this propo-
23 sition the drugs which were later shipped in that suitcase?

24 MR. SLOTNICK: Objection, Your Honor. No relevancy.

25 THE COURT: What is the relevance of that?

MR. FELD: The relevance, Your Honor, is that we have testimony that this was purchased from a source and that the source was only partly paid. And these people are claiming ownership of the narcotics in the suitcase. This testimony might tend to contradict that earlier testimony.

THE COURT: All right. I'll allow it for that purpose.

You may answer.

A I don't recall the question.

THE COURT: Pardon?

THE WITNESS: I get confused. I don't recall the question.

THE COURT: Read the question.

(Question read.)

A No.

Q They were subsequently obtained?

A Correct.

Q By whom, by you?

A No.

Q By Mr. Capra?

MR. FEITELL: I'll object to this, Your Honor. I don't think this is relevant either to the inquiry.

THE COURT: Yes, I think it gets a little far afield. Sustained.

Q Now, you testified that in your mind the four partners in this venture, you felt in your mind the four partners were responsible for the suitcase in the event it was lost, it was seized before it reached the buyer. Is that a fair statement?

A Correct.

Q Was there any discussion between you and Mr. Ramos concerning whose loss it would be?

A Yes, there was.

Q In such an event?

A Yes, there was.

Q And when did that discussion take place?

A Well, at the negotiations when he was brought in as a partner, we discussed what would happen in the event this was lost or it wasn't agreed to by the purchasers insofar as quality, quantity, et cetera, who would bear the responsibility of it.

Q Is this the initial meeting you just told us about?

A A subsequent meeting.

Q When did that subsequent meeting take place, and where?

A Several days later.

Q And where did it take place?

A I think at Mr. Ramos' house.

2 Q Where was that located?

3 A In Country Club.

4 Q In the country club?

5 A In Country Club. That's an area of the Bronx.

6 Q Is there a street name that goes with that?

7 A He lived on Radio Drive in Country Club.

8 Q On Radio Drive. And this was a discussion at his
9 house, you say?

10 A Correct.

11 Q Who else was present at this discussion?

12 A I don't recall.

13 Q Was Mr. Capra present?

14 A I don't recall.

15 Q Was Mr. Dellacava present?

16 A I honestly don't recall.

17 THE COURT: Now, wait a second. Are you going to
18 drop that at that point?

19 MR. FELD: No, Your Honor.

20 THE COURT: All right.

21 Q Tell us what you said --

22 THE COURT: No, no. I really think we can do
23 better on who was present. If this is an association of this
24 term or deal which is not trivial, press it.

25 Q Was anybody else present apart from you and Mr. Ramos?

1 A His wife may have been in the house, as I recall.
2
3 He had a pretty active apartment. I really don't know who was
4 present. I know he and myself. There is a possibility Capra
5 and Dellacava were present. I honestly don't recall.

6 THE COURT: Were you in charge of this deal at this
7 time?

8 THE WITNESS: Me?

9 THE COURT: At this time.

10 THE WITNESS: We were all equal partners.

11 THE COURT: Did you have authority for Capra and
12 Dellacava to do their part?

13 THE WITNESS: Yes.

14 THE COURT: As you think about it now, was this an
15 important meeting?

16 THE WITNESS: Well, Your Honor, at this point it
17 still wasn't a definitive deal. He had just put this out in
18 conversation.

19 THE COURT: Mr. Feld is asking you when the
20 deal about responsibility for loss got made and you said
21 this was the meeting.

22 THE WITNESS: Correct.

23 THE COURT: Wasn't that important?

24 THE WITNESS: Well, Your Honor, you must understand
25 all the individuals involved know themselves all their lives,

virtually, other than Ramos.

THE COURT: I'm asking you was it important.

THE WITNESS: Oh, certainly.

THE COURT: Now, think about it. Was Mr. Capra there?

THE WITNESS: I honestly don't recall. You know why, we used to stay together and we would be with each other in the course of a full 24 hours on four or five separate occasions. We may be together eating, I may leave and go home, and subsequently meet him later that night for a drink. I really don't recall who was present. They may have been present.

THE COURT: Are you going to tell us in a couple of minutes what the understanding was that was made about responsibility for loss?

THE WITNESS: I'll tell you that right now.

THE COURT: Are you going to tell? Are you also going to tell us who said what about that subject? That is, what you said, what Ramos said?

THE WITNESS: It was a mutual agreement and understanding.

THE COURT: But somebody said it.

THE WITNESS: Yes. I initiated it.

THE COURT: Was Mr. Dellacava there?

THE WITNESS: I don't recall, Your Honor.

Q Was this the first meeting that this subject matter came up?

A What do you mean, about the partnership?

Q About who would have responsibility for the suitcase.

A Yes.

Q Now, you said to His Honor in response to his question that you initiated it, "it" meaning the topic of discussion?

A No. The topic of who was responsible. I didn't initiate the discussion. Johnny initiated the discussion. Then I told him that based upon the amount of money he had to make for a down payment we couldn't possibly pay for the whole thing in total. So that we would have to retain partnership in it because we couldn't pay for it. Since we couldn't pay for it and we were responsible for the narcotics, we should have a piece of the overall profit. This is what I told Johnny. He initiated the conversation about the drugs. This was my response to him.

Q And how much money was going to be paid for it?

A I recall 100,000. It may have been --

Q That figure didn't change at this meeting?

A I recall \$100,000.

Q Now, did you report this conversation to your other

partners?

A Certainly.

Q And to whom did you report it?

A To both of them.

Q Dellacava and Capra?

A Yes.

Q They were the only other partners in this venture;
is that correct?

A Other than Ramos.

Q Other than Ramos and yourself?

A Yes.

Q When did you report this discussion?

A The first -- on the first occasion I saw them
after speaking to Ramos.

Q When was that?

A Possibly the same day.

Q Where did that occur?

A Any one of a number of places, our bar, the club
that we owned.

Q What is the name of your bar?

A Armando's.

Q That is at 2034 Second Avenue. Is that correct?

A You know the address better than I do.

Q That's surprising, since you are an owner. But

2 you had a discussion with them. Now, tell us to the best of
3 your recollection what you said to them and what they said to
4 you in respect to who had responsibility for the suitcase.

5 A We didn't go into the discussion of the responsi-
6 bility of the suitcase, Mr. Feld. We discussed what Ramos
7 had proposed to myself and how, if we were goint to be responsi-
8 ble for the drugs it seemed a little ridiculous for Ramos to
9 reap all the rewards and we had all the responsibility. I
10 told him, I told Ramos if he wanted us to have the responsi-
11 bility for the purchase of the narcotics, we should also
12 retain an interest in the profit. I conveyed that to them and
13 they indicated to me I was right in my judgment.

14 Q What was the profit going to be?

15 A In total?

16 Q Yes.

17 A About 30,000.

18 THE COURT: Let me hear the answer. What was the
19 answer?

20 THE WITNESS: About 30,000.

21 Q That was the total profit on the approximately
22 six kilo of heroin and one kilo of cocaine?

23 A As I recall.

24 Q And that profit was going to be shared amongst the
25 four partners that you specified?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Correct.

Q And were you each going to get an equal share?

A Correct.

Q And how much were you going to pay for the drugs?

MR. SLOTNICK: Objection, Your Honor. Again I object to that. It is irrelevant to this proceeding.

THE COURT: Why is that relevant, Mr. Feld?

MR. FELD: I withdraw it, Your Honor.

Q Were there any other meetings -- Withdrawn.

Now, did there come a time when you discussed with Mr. Dellacava and Mr. Capra a suitcase for the purpose of transferring the narcotics?

A You know, it is such a minor point, at that time I don't recall having a discussion. I'm sure I told Mr. Dellacava to get something to put the drugs in, but I don't recall telling him, "Mr. Dellacava, go to Korvettes and get a suitcase"; no, I don't.

Q Do you recall Mr. Capra telling him that?

A I wasn't with Mr. Capra and Mr. Dellacava together 24 hours a day.

Q You just testified that you were with them many times during the day.

A Certainly.

Q Do you ever recall Capra telling Mr. Dellacava

in your presence to go to Korvettes and buy a suitcase with \$30 from the kitty?

A I don't recall.

Q Did Mr. Dellacava ever tell you that he did buy a suitcase?

A Yes, he did.

Q And did he tell you where he bought it?

A No, he didn't.

Q He never specified that?

A No.

Q When did he tell you that?

A He told me the day prior to the delivery of the narcotics to Ramos. The day or night or evening.

Q And had you previously authorized him to spend the partnership money to get the suitcase?

A I don't have to make authorizations of that nature.

Q Now, there came a time, according to Mr. Dellacava, that he delivered the suitcase to Ramos; he has testified to that and you have heard that testimony; is that correct?

A Yes.

Q In exchange for which he received, according to his testimony, \$150,000 from Mr. Ramos. You disagree, I take it, as to that figure?

A As I recall, it was a lesser figure.

1 Q It was approximately \$100,000?

2 A 100, 124, around there. I'm not sure. At that point
3 I was removed from the negotiations. I don't know what
4 transpired there.
5

6 Q As a partner you had an interest in determining --

7 A Correct.

8 Q -- the down payment on the purchase price for these
9 narcotics; is that right?

10 A I know all the individuals involved all my life, so
11 I didn't question whatever they told me.

12 Q Did there come a time when you received from Mr.
13 Dellacava the sum of money which he said was the down payment
14 for the purchase price of this narcotics?

15 A No.

16 Q Do you know what he did with that \$100,000?

17 MR. SLOTNICK: Objection, Your Honor. It calls for
18 a hearsay conclusion.

19 THE COURT: Overruled.

20 A I believe he turned it over to whoever he purchased
21 the drugs off.

22 Q Do you know the name of that person?

23 A I think it was --

24 MR. McALEVY: I have an objection to that answer.

25 THE COURT: I don't know what the law is on that.

1 He answered before you could object. It is an interesting
2 legal question for a late afternoon. He answered before you
3 could object and the reporter didn't hear the answer. I think
4 you win this one. The reporter helped you.

5 What is your objection?

6 I beg your pardon, the reporter didn't help you,
7 the witness' loss of voice from which both of us are suffering
8 up here helped you.

9 What is the objection?

10 MR. McALEVY: I believe this was a hearing for
11 standing. What difference does it make who the drugs were
12 purchased from?

13 THE COURT: You say it is irrelevant?

14 MR. McALEVY: Absolutely irrelevant.

15 THE COURT: Why don't you just say that?

16 Why is it relevant?

17 MR. FELD: I think I explained, Your Honor.

18 THE COURT: Explain again.

19 MR. FELD: There is a question of who was the owner
20 of the contents of this suitcase at the time it was seized
21 in Cleveland.

22 THE COURT: I don't care about that. A lot of these
23 questions of title are going to be beyond me, anyhow, in this
24 case. But I don't really care about that.
25

1 Sustained.

2
3 Q Now, I believe you testified on direct examination
4 that it didn't matter to you who delivered the drugs or where
5 they were delivered. Is that correct?

6 A Correct.

7 Q Even though you had an ownership interest in it?

8 A Correct.

9 Q And even though you were responsible for it?

10 A Correct. Equally responsible.

11 Q Equally responsible?

12 A With three other individuals.

13 Q Now, did you ever receive any of that 100,000,
14 according to your testimony, \$150,000 that was the down pay-
15 ment for that purchase price?

16 MR. SLOTNICK: Objection, Your Honor.

17 A Me personally?

18 Q Yes.

19 MR. SLOTNICK: Objection, Your Honor. That has
20 been asked and answered.

21 THE COURT: Overruled.

22 What is the answer?

23 THE WITNESS: No.

24 Q I believe you testified that there is a balance
25 due and owing since a down payment had been made. To the

best of your knowledge, how much was that down payment --
that balance due and owing?

A In excess of \$100,000, to the best of my knowledge.

Q And that was to be paid by the customer to Mr.
Ramos?

A Correct.

Q And he in turn was to turn over part of that money
to you, Mr. Dellacava and Mr. Capra; is that correct?

A Correct.

Q What were the arrangements as to when and how that
was going to be done?

A Well, once the drugs were okayed by what other
people were that were delivered to and the weight and quality
was okay, then the money was supposed to be transferred to Mr.
Ramos, I believe, in the valise, is the way it was supposed
to be done, and given to Mr. Ramos and he was supposed to
bring it to us.

Q Whoever it was that was supposed to deliver it,
the delivery man was supposed to open the suitcase, take out
the contents, give it to somebody and then they were supposed
to put money in the suitcase and the money was supposed to
come back? Is that right or wrong?

A That's wrong. Supposed to deliver the drugs. When
they got it, they were supposed to test it, see if the

1 the quantity and quality was okay. If it was, remove the
2 drugs from the valise, put whatever the balance was back into
3 the valise and deliver it to Mr. Ramos and he was supposed to
4 in turn deliver it to us.
5

6 Q With the suitcase?

7 A With the suitcase. That was my understanding.

8 Q Where did you get that understanding from?

9 A With Johnny Ramos.

10 Q Directing your attention to October 1972, do you
11 recall being present at a discussion in which Mr. Capra and
12 Mr. Dellacava participated at which time it was said that J.
13 Messina had delivered that suitcase?

14 MR. FEITELL: I will object to this. I don't know
15 if this witness is being attacked with his own statement.
16 Counsel said it was said.

17 THE COURT: It was said, do you want to say by whom?

18 MR. FELD: Maybe the witness can help us.

19 MR. McALEVY: I don't think he should be called
20 upon to do that.

21 THE COURT: Overruled.

22 MR. PANZER: I have an objection, if I may. Again
23 my client is not covered by the Simpson ruling. His name has
24 just been mentioned and I think there is a real issue in this
25 case as to whether Mr. Messina was or was not the person

1 in Toledo, Ohio. The Government may obtain leads. I don't
2 know what the leads will show, but they may obtain leads and
3 I don't want that to happen, and I object.
4

5 THE COURT: It has become evident to me that the
6 Government purports to have evidence on this subject now.
7 If and when evidence is adduced that affects your client in
8 the fashion you describe, I think the same position will
9 prevail as prevails with Mr. Stone's client, and Mr. Feld
10 will have whatever burden you can show he has to show the
11 absence of taint. I think that takes care of that.

12 Do you disagree and, if so, what do you think I
13 ought to do?

14 MR. PANZER: I think we ought to get a represen-
15 tation from Mr. Feld that if anything is brought out here
16 that he doesn't already have as a result of examining this
17 witness, he won't use it. I think that will effectively
18 protect my client.

19 THE COURT: Mr. Feld, do you think you ought to
20 make such a representation?

21 MR. FELD: I haven't studied the law on this
22 particular topic and I would wish some time to review the
23 subject before I committed myself one way or the other. I
24 will say we will make the same representation as far as our
25 burden, after a trial as to the questions of taint.

1 THE COURT: If you are going to make that repre-
2 sentation, I don't see why you don't go along with Mr.
3 Panzer's suggestion. He just wants you to affirm that you
4 won't use this testimony directly or indirectly to get leads,
5 further leads against his client. Otherwise, he says, he has
6 standing to object here and I think there is merit to that
7 objection.
8

9 MR. FELD: We don't intend to use it, Your Honor.

10 THE COURT: You so represent?

11 MR. FELD: Yes.

12 THE COURT: All right. And you will have this in
13 mind against Mr. Messina and also against Mr. Morris.

14 MR. FELD: Yes, Your Honor. I think that leaves it
15 in a position where you can cope with it.

16 MR. FEITELL: I'll further object to the form of
17 the question. If the witness is going to be taxed with his
18 recollection at a particular time, he should first be put the
19 question as to whether he overheard a certain statement made
20 about J. Messina, who said what about him, and what the
21 answer was. Not simply did he hear the name J. Messina.

22 THE COURT: I thought I had ruled on that, but
23 that is overruled.

24 Do you want the question read?

25 THE WITNESS: Yes, sir.

THE COURT: All right.

(Question read.)

A I read the Government's transcript --

THE COURT: That is not what you were asked. Do you recall such?

THE WITNESS: No.

THE COURT: Are you almost finished with this cross? If you are, I may let you conclude. If not, we are going to suspend.

MR. FELD: I have some more time.

THE COURT: We will stop for the day and we will resume at 10:00 a.m. when Mr. Guarino will resume his cross.

You are excused now. Thank you, Mr. Guarino.

(Witness excused.)

THE COURT: We have a couple of matters on which I guess I want clarification or at least assistance. I had indicated earlier this morning or this morning, at least, my intention to arrange for the assignment of counsel for Mr. Harris. My office has been in touch with counsel who is available. I left it to the Government to indicate whether there is anything objectionable about that.

MR. FELD: I would like to respond to that, Your Honor. We don't have any objection to proceeding in that fashion, but I would only like to address a word of caution

1
2 here because I think that this is a very special kind of
3 record that we have here which perhaps may justify what the
4 Court intends to do absent the filing of the affidavit of
5 indigency. I don't think -- I think it ought to be spelled
6 out clearly so this is not cited as a precedent in the
7 future for somebody else's application and refusal to submit
8 such an affidavit.

9 I would also think that possibly there might be a
10 problem later on when whoever is appointed counsel applies
11 for his fee in this case. He may then have a problem in
12 obtaining unless some kind of specific order is entered which
13 would permit him to do so.

14 THE COURT: Well, that's what I asked your guidance
15 on. Of course if you keep talking enough, he may have a
16 problem. My question is what is his problem and how can I
17 handle it in the interest of justice? I don't want to
18 appoint a lawyer who is going to have a big problem with
19 which he is getting some assistance from the Government in
20 collecting his \$300 for service that the Court thinks is
21 appropriate under the Criminal Justice Act. Now, if there
22 is a problem, I ask you what is the problem and how can we
23 cope with it?

24 MR. FELD: I don't think that the Government is
25 paying him his fee. It is the office of the courts that are

1 dags
2 paying him his fee and I think it is a judicial matter of
3 concern, it is not a matter of concern to the United States
4 Attorney. We have no objection to having counsel appointed
5 for Mr. Harris and that counsel appearing for him at the trial.

6 THE COURT: Well, I know, but you had it put to you as
7 an officer of the court that I wanted your advice, and your
8 advice appears to be, if I may paraphrase it, gee whiz, there
9 may be a problem here. And my question to you is, what is the
10 problem and what is the solution? I think I am entitled to
11 call upon you for that kind of assistance.

12 MR. FELD: I understand that, Your Honor. I spoke
13 to my superior about that in the United States Attorney's
14 office, because the Court did address that question, and he
15 said it was not a matter of concern for the Government.

16 THE COURT: I don't know why you say that twice
17 when I didn't like it the first time. If the Court puts a
18 question as the member of our bar and an officer of the
19 United States representing the Government in this court, ipso
20 facto that's a concern to you. I don't know which of your
21 superiors thinks otherwise.

22 MR. FELD: We believe --

23 THE COURT: Get concerned with this now and be
24 prepared to tell me in the morning whether you or your
25 indifferent superior have any pertinent knowledge or wisdom

1 that will assist the Court and assist your brother at the bar
2 whom I am going to assign to represent Mr. Harris. It is not
3 my money either, but I am interested in doing it correctly
4 and I would hope that Mr. Curran is interested in doing it
5 correctly.
6

7 Please see to it that you are prepared in the
8 morning to enlighten me on this subject, particularly to tell
9 me, one, is there a problem in order to preclude this course,
10 and, two, is there a problem which is soluble so that we may
11 take this course with all propriety and without imposing on a
12 member of our bar to whom this representation is going to be
13 given. Okay?

14 MR. FELD: All right, Your Honor.

15 THE COURT: Now, I hope we will conclude this
16 hearing tomorrow, but just give me some guidance. Mr. Guarino,
17 I take it, will be finished reasonably soon. Do any or all
18 of the three defendants propose to offer additional evidence
19 on the subject of this hearing that is now in progress?
20 Mr. Slotnick?

21 MR. SLOTNICK: At this time I have no intention of
22 doing so.

23 MR. FEITELL: Nor do I, Your Honor.

24 MR. McALEVY: Ditto, Your Honor.

25 THE COURT: Okay. Do you have evidence you plan to

give on this, Mr. Feld?

MR. FELD: May I consult with Mr. Feffer, Your Honor?

THE COURT: Yes.

(Mr. Feld and Mr. Feffer confer.)

MR. FELD: We will not offer any witnesses on this particular subject, Your Honor.

THE COURT: Then it seems to me, and I'm doing this for my guidance and for everybody else's, that reasonably early in the morning we will have a lawyer for Mr. Harris and we will have concluded the evidentiary hearing on this Toledo suitcase subject. I think then we ought to proceed to the other motion to suppress, the automobile search that we talked about earlier today, that I hoped we would hear today but we are a little behind.

Now, in general for counsel, all of whom have made compendious motions, I would prefer not to hear any more that you are surprised that I turn to one of your motions and undertake to deal with it. I will try to suit your convenience and the convenience of the Court in dealing with these motions one at a time. It was not written in Mount Sinai or anywhere else that this is a minimization hearing and we can't talk about any other subject. All the things you have given me to decide you are going to help me decide and I am going to peel them off in whatever order seems appropriate to me. If you

1
2 make a motion to suppress, you really ought not to be
3 astonished if there are factual issues I order and an
4 evidentiary hearing on it. Three of your nearly had break-
5 downs when, on a simple issue of fact, I said I'd like to
6 hear it in the usual way. Let us not have that happen any-
7 more. You are all responsible for litigating all of your
8 motions and for being at the Court's service so that we may
9 try to decide some of them correctly.

10 We will resume at 10:00 a.m.

11 Anything else?

12 MR. LEVENSON: Yes, Your Honor. With respect to
13 assigned counsel in this case itself, I'd like at this time
14 to request a daily copy be provided to assigned counsel, one
15 copy for all of the assigned counsel. I'm not sure whether
16 or not these preliminary matters need be recorded and
17 provided to counsel, but certainly at the trial I'd like to
18 renew that motion.

19 THE COURT: Let me ask, are any of the more affluent
20 defendants ordering daily copy?

21 MR. FEITELL: We haven't determined that.

22 THE COURT: You may renew that when I hear which
23 other defendant may or may not be ordering daily copy. If
24 those who could arguably afford it have an inclination to
25 believe they can manage without it, that may place a

2 different light on your applications, but I will consider it.

3 MR. LEVENSON: One other point. Can I assume that
4 the Court in making a determination as to Mr. Guarino's
5 motions and Mr. Capra's motions, that where a ruling is made
6 which affects other defendants, the Court will entertain a
7 motion for those other defendants to join in the motion
8 without doing it formally beforehand?

9 THE COURT: I don't even know what that means.
10 Give me an example.

11 MR. LEVENSON: There is a motion by Mr. Guarino
12 to make the Government decide as to what sections of the law
13 they are going to proceed under. Now, if the Court finds
14 that there is merit to that motion, as it appears there may
15 be, I assume that that will apply to all defendants who are
16 covered by that particular count in the indictment.

17 THE COURT: Well, I imagine so. But you are just
18 going to have to watch the interests of your client. I can't
19 give you off-the-cuff generalities about what lawes to the
20 benefit of whom. Mr. Feffer has filed a brief, the Govern-
21 ment has filed a brief saying they will elect, in effect,
22 at the time the jury is instructed. Thus far nobody has
23 indicated to me why that prejudices anybody because it appears,
24 as a practical matter, to affect only conceivably the question
25 of sentence. But I may be wrong in that and somebody may

1 show me how he is to be affected in some possible way. If
2 that happens, that may apply to your client or not. You
3 will have to tell me about it.
4

5 MR. STONE: One small housekeeping matter. Mr.
6 Harris has asked me if his wife could bring him food through
7 the inspection of the marshal. He has ulcers and he wanted
8 to provide food for both himself and Mr. Morris.

9 THE COURT: That seems to me to be a detention
10 facility question. I don't know what their practices are in
11 that regard.

12 MR. STONE: I think their practice is certainly to
13 inspect the food, but I think they need your approval before
14 they will undertake that.

15 THE COURT: If the only question is to whether I
16 give my blessing to that course, the answer is yes. If you
17 are asking me to issue an order to the warden without a
18 fuller showing than you have just made, I'm not going to issue
19 an order.

20 MR. STONE: We are only talking about the lunch
21 meal served in the courthouse.

22 THE COURT: Whatever meal you are talking about, if
23 there is no necessity for an order, Bless you all and enjoy
24 the lunch. If there is a necessity for an order, I'm not
25 going to rear back and give it to you. I want the Government

1 to have an opportunity, if they want it, to say why not. When
2 I hear you both I'll decide whether to make an order.
3

4 MR. SLOTNICK: Earlier this morning I attempted to
5 indicate to the Court that on September, I think it was the
6 10th, I received notice from the Government that they were,
7 I guess you might say, both to render a bill of particulars
8 in that suddenly a statement of the defendant Capra, while he
9 was in custody, arose. In speaking to Mr. Feld he indicated
10 that the Government would consent to a hearing with regard
11 to those statements. I would ask Your Honor, one, to bar the
12 Government from using the statement. based on the fact that
13 it is a statement alleged to have been made by the defendant
14 sometime in April, and, two, I have a hearing with regard to
15 expressing those statements.

16 MR. FELD: We consented --

17 THE COURT: What about the first part? He said I
18 should suppress it without a hearing. Why did you tell him
19 about it so late?

20 MR. FELD: We told him about it so late because
21 we didn't know about it until this time.

22 THE COURT: To whom is the statement alleged to have
23 been made?

24 MR. FELD: It was made at the time the defendant
25 was detained orally and was heard by an agent who was present.

1
2 THE COURT: To whom was it made?

3 MR. FELD: Not made to anybody in particular.

4 THE COURT: It was overheard?

5 MR. FELD: Overheard.

6 THE COURT: And the agent didn't mention it until
7 when?

8 MR. FELD: I had never known about it. May I tell
9 the Court how this arose?

10 In Mr. Slotnick's initial motion papers he asked
11 for all statements of the defendant. I said in response that
12 the Government would furnish him with all statements of the
13 defendant. As far as I knew at that time there were no
14 statements made by the defendant but I intended to check with
15 all of the agents who were connected with his arrest. As
16 soon as I discovered any such statement I would immediately
17 notify Mr. Slotnick. That's precisely what we did, Your
18 Honor.

19 THE COURT: Well, I gather there is no dispute
20 about your right to a hearing on warnings or whatever else
21 is involved in that I have not heard any reason for suppressing
22 the statement in the absence of a hearing. If there are any,
23 you can present them to me in due course, Mr. Slotnick, but
24 I request now that both of you put this on your agenda and
25 see that we cover it at some point in the next week or two,

1 dsas

2 which has been allotted to the various little incidental
3 things we are having in this case.

4 MR. SLOTNICK: Would Your Honor object to oral
5 presentation or would it be necessary for me to put this on
6 paper as to why this should be suppressed without a hearing?

7 THE COURT: One sheet of paper will do, because all
8 you have to do is tell me the kind of prejudice your client
9 is suffering from your being told about it a month before
10 trial rather than five months before trial, and I'll consider
11 it, especially in light of what I understand to be the
12 Government's position that in this one instance, at least,
13 they did not willfully and maliciously withhold from you
14 something they had known for a long time.

15 Anything else, gentlemen?

16 MR. FEFFER: Your Honor, just briefly, in the
17 interest of possibly getting counsel for Mr. Morris this
18 evening, I think you may have misunderstood.

19 THE COURT: Counsel for whom?

20 MR. FEFFER: Harris, I'm sorry.

21 Our position is very simply that in any order that
22 you write to that effect, that you specify the circumstances
23 which dictated the appointment of counsel without the affi-
24 davit so that when the lawyer at a later date goes to the
25 committee and tries to receive funds, at least they are

aware of the fact that the affidavit was not presented at your direction and for reasons that are set forth in the order.

THE COURT: Mr. Curley, would you advise me, because I keep forgetting some of these procedures. Is an affidavit always required as a pre-condition to the assignment of counsel?

MR. CURLEY: Yes, Your Honor. It is a questionnaire rather than an affidavit at the present time.

THE COURT: Well, I have planned to make a recital of the peculiar circumstances. I thought I touched on them this morning. But what I will ask you to do is tomorrow morning when I assign the lawyer, who I hope will be here, please for my assistance and that lawyer's assistance attend to the recital. And if I omit any of the circumstances that are known to you, remind me of them and we will add them. If that's all you have in mind, I take back all the holddering.

MR. FELD: That's all, Your Honor.

THE COURT: I had that in mind at all times. My question still is, if I make the recital of these circumstances, which are that I will find as a fact that on the basis of the material made before me he doesn't have assets convertible to cash. My question is why the lawyer assigned in those circumstances should have trouble getting paid.

MR. FELD: Your Honor, let me say this: I will

1 dsgr

107

2 try to find out the answer to that precise question over-
3 night and report to you tomorrow morning. There may not be an
4 answer. I don't know.

5 THE COURT: I don't see any sensible reason why he
6 should have trouble, but I just want to be alerted to any
7 reason that is not so sensible. It is not your fault, but the
8 law's fault, and see if we can cope with it.

9 MR. PANZER: May I just add to this, there have
10 been instances where no CJA affidavit has been filed and
11 an attorney has been assigned. My understanding is that once
12 the judge signs the order he is satisfied the attorney should
13 be assigned under the Criminal Justice Act, that attorney
14 has no difficulty in getting paid by Washington, D.C.

15 THE COURT: I hope you are right. It is my general
16 impression that is so. That is the impression I am proceeding
17 on. We are worried about Mr. X. I just hope a lawyer that
18 I have called to work doesn't work for nothing.

19 MR. PANZER: I have had several such assignments
20 and had no difficulty getting paid.

21 THE COURT: I hope that's the way it works out.

22 10:00 a.m.

23 (Adjourned to September 18, 1973 at 10:00 a.m.)
24
25

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Stephen Dellacava	2	9	31	32
John Capra	34	37	52	53
Leoluca Guarino	55	60	-	

- - -

1 UNITED STATES OF AMERICA

2 v

73 Cr 460

3 JOHN CAPRA, LEOLUCA GUARINO,
4 STEPHEN DELLACAVA, ROBERT JERMAIN,
5 GEORGE HARRIS, EARL SIMMS, ALAN
6 MORRIS, JOSEPH MESSINA, and
7 CARMELO GARCIA

New York
September 18, 1973
10:00 a.m.

8 (Hearing resumed.)

9
10 - - -

11
12 (In open court.)

13 THE COURT: I'm looking for Mr. Blackstone.

14 MR. BLACKSTONE: Here I am, Your Honor.

15 THE COURT: I understand from the clerk that you and
16 Mr. Harris have had an opportunity to speak to each other?

17 MR. BLACKSTONE: Yes, we have, Your Honor.

18 THE COURT: Is Mr. Hill here?

19 MR. BLACKSTONE: No, Your Honor.

20 THE COURT: Do you expect him, Mr. Harris?

21 MR. HARRIS: No, I don't, sir.

22 THE COURT: Well, why don't you come forward, please.

23 (Mr. Harris complies.)

24 THE COURT: I have called Mr. Blackstone on your
25 behalf and he is willing to take the assignment of your case.

1 days

110

2 Is that agreeable with you?

3 MR. HARRIS: Agreeable, sir.

4 THE COURT: And based on the conversations that we
5 have had, some of them off the record, some of them on the
6 record, perhaps I ought to take three minutes to make explicit
7 what is happening, and this, again, is subject to improvement
8 and corrections to record as accurately as possible the facts,
9 and I look to Government, counsel for any such improvements or
10 corrections as may occur to them.

11 I have learned through Mr. Harris and his attorneys,
12 Mr. Hill and Mr. Mitchell, that his funds have been exhausted
13 in connection with a prior criminal proceeding in which he
14 was a defendant. I have been made aware, both through the
15 trial testimony of Mr. Harris and in personal conversations
16 with him and his attorneys, that he has certain property in
17 the form of copyrights and recording and related equipment
18 which may have a value and indeed may have some substantial
19 value, but which does not appear at this time to be saleable
20 for any substantial amount of money. I have explored with
21 Mr. Harris, his attorneys, and his wife, the state of his
22 available resources as well as his wife's. I am persuaded
23 as a result of this exploration that Mr. Harris is effectively
24 indigent as he stands before me incarcerated as a result of
25 his prior conviction. I am persuaded that he has no cash

1 dsgrs

2 and has no assets reducible in the foreseeable future to any
3 meaningful amount of cash, and that he in substantial and
4 effective reality qualifies, therefore, for the assignment of
5 counsel under the Criminal Justice Act.

6 He has discussed with me in chambers and with his
7 and Government counsel present the reasons why he is reluctant
8 to sign an affidavit which would memorialize his indigency, and
9 I am persuaded that there are possibly subtle legal problems
10 in his executing such an affidavit, including even conceivable
11 problems of incrimination which justify his hesitancy.

12 I conclude on all the facts that this is a proper
13 case for the assignment of counsel. I am influenced in the
14 direction of that conclusion by an awareness that the instant
15 case now pending before me is one involving some ten defen-
16 dants and that there is an obvious interest in the effective
17 processing of that case, which evidently will be a fairly
18 lengthy one. Nevertheless, of course, I understand that my
19 duty is not to assign counsel to somebody who is not indigent,
20 so I repeat, in the circumstances as I have sketched them I
21 am entirely persuaded that Mr. Harris is qualified and that
22 he should be assigned a lawyer in order that he may have a
23 fair trial in this pending proceeding.

24 Do you want me to add anything to that, Mr. Feld?

25 MR. FELD: No, I think that is sufficient, Your Honor.

1
2 THE COURT: The only thing I will add is my
3 expression of the Court's gratitude to you, Mr. Blackstone,
4 for appearing so promptly and helpfully. It may be the last
5 kind word I say to you in this case, but I do want to place
6 it on the record, and that I appreciate this, like other
7 services you have extended.

8 MR. FELD: I understand this appointment is to
9 cover both this case of Mr. Harris and Mr. Harris' previous
10 case. Is that correct?

11 THE COURT: No, I did not intent that at all. I
12 have not at this moment released Mr. Hill or Mr. Mitchell
13 from either case. Now, I think the wise course to be followed
14 in Mr. Harris' interest is to make clear on the record now
15 that Mr. Blackstone is being assigned for this case now in
16 process before me. What is its number?

17 MR. FELD: 73 CR 460.

18 THE COURT: As to the prior case, I think my only
19 remaining office in the immediate future is to consider the
20 sentencing of Mr. Harris, and I think he and Mr. Blackstone
21 should consult together about that case, because obviously
22 Mr. Harris is just one man, although he has more than one
23 case, and see what is best for him. If it is decided that
24 Mr. Blackstone should represent him for sentencing, make that
25 note on a piece of paper and I will make the assignment for

1 legs

113

2 that. If it is decided Mr. Hill and Mr. Mitchell should stay
3 in that exclusively or jointly, arrange that.

4 MR. HARRIS: I talked to Mr. Mitchell last night
5 and he has my appeal prepared, and he told me to enter into
6 the record whatever discussion that you have, but make it
7 clear the reason I don't want to sign the affidavit is that I
8 have a pending income tax evasion case that's going on for
9 four and a half, five years, and I do have real estate and
10 I can't sell any of it until the Government settles the
11 income tax case, and this is my reason. I think Mr. Feld
12 is aware of this. And my trial is due to start in Michigan
13 on the 30th before the Honorable Daniel Kieth.

14 THE COURT: All right, I think those are pertinent
15 additions to the things that have been said.

16 Now, I have not formally released Mr. Hill and
17 Mr. Mitchell. Work that out, Mr. Blackstone. I will relieve
18 them as soon as you prepare your substitution for appearance
19 in this case. Prepare the C.J.A. form and I'll sign it and
20 I leave to you whether you are going to get into the other
21 case or stay out of it, whichever seems appropriate. Okay?

22 MR. BLACKSTONE: Yes, Your Honor.

23 THE COURT: Now, you may want to consult, if you
24 can, quietly with Mr. Harris. It is my understanding that the
25 proceeding now in progress before me, while it may interest

1 dags

2 or even amuse Mr. Harris, is of no special concern to him.
3 But I am not positive about that. You make your judgment,
4 and if you find that it is appropriate, as other counsel have
5 indicated for their clients, that you and Mr. Harris be
6 excused, let me know.

7 MR. BLACKSTONE: I think Mr. Harris desires to
8 follow the proceedings here. That's what he told me this
9 morning, even though there is indication that he is not
10 affected in the suppression hearings.

11 THE COURT: You let me know what you want to do.
12 If you feel you ought to be with him, stay with him.

13 I am reminded there was a question as to the
14 supplying of handwriting exemplars by Mr. Morris.

15 MR. STONE: That is correct, Your Honor.

16 THE COURT: Mr. Swansinger tells me we stand where
17 we stood yesterday.

18 MR. STONE: That is correct, Your Honor. Mr. Morris
19 has expressed another opinion which I will, of course, forward
20 to the Court without comment, because I have no authority to
21 support it. But Mr. Morris is anxious to obtain in writing
22 a guarantee by the United States Attorney and by the presiding
23 judge that this handwriting can't be used in any other
24 proceeding. He further wants in writing a guarantee that
25 the witness who analyzes the handwriting would be bound and

1 dsgrs

2 limited to this proceeding and could not furnish any other
3 prosecuting authority any information that that witness gleaned
4 as a result of this proceeding.

5 I informed him, Your Honor, that I know of no
6 authority that would ask to submit in court in writing any
7 orders. I further informed him, the proceedings here, in the
8 event a handwriting expert would testify, would be available
9 to anybody that would purchase them, whether they be prose-
10 cuting authorities in another jurisdiction or people that came
11 off the streets.

12 Is that correct, Mr. Morris?

13 MR. MORRIS: Yes.

14 MR. STONE: Indicate that he agreed that is what
15 he asked me to state, Your Honor. I don't know what comment,
16 if any, the United States Attorney would like to offer.

17 THE COURT: Mr. Feld.

18 MR. FELD: I would agree with Mr. Stone. I know
19 of no authority which would justify such an order or would
20 warrant such a request.

21 THE COURT: Well, then, what is your application,
22 Mr. Feld?

23 MR. FELD: Our application, Your Honor, is that
24 this pre-condition for giving handwriting samples requests
25 should be denied and that the handwriting samples should be

given by the defendant forthwith.

THE COURT: Well, I will deny the request. I don't see any basis on which I can compel the Government to give such a guarantee and I don't think it is appropriate for the Court to consider issuing any written guarantees of anything.

Now what do we do?

MR. FELD: I think we have to inquire from Mr. Morris whether he is prepared now, in light of what Your Honor has just said, to give us the handwriting samples. At that point, if he is willing, then we can proceed. If he is not, we will have to perhaps have another application.

THE COURT: All right, you know the question, Mr. Morris. What is the answer?

MR. MORRIS: No.

THE COURT: You refuse to give the exemplars?

MR. MORRIS: That is correct.

MR. FELD: Your Honor, our application would be that the defendant Alan Morris be held in contempt of court.

THE COURT: Under what rule or statute are you making that application?

MR. FELD: I don't know offhand, Your Honor.

May I have a moment, Your Honor?

THE COURT: Yes.

(Mr. Feld and Mr. Feffer confer.)

1
2 MR. FKLD: Your Honor, may I direct Your Honor's
3 attention to Rule 42(a) of the Federal Rules of Criminal
4 Procedure.

5 THE COURT: All right, I can't recall in eight
6 years any occasion when it has been necessary for me to hold
7 anybody in contempt and I find it a somewhat uncomfortable
8 and disagreeable mode of procedure, but it seems to me that
9 this is a perfectly clear case and that there is no other
10 course for the Court to follow. It seems perfectly clear
11 to me that both yesterday and today the requirement has been
12 conveyed to Mr. Morris that he must supply the handwriting
13 exemplars that other defendants have supplied, and that I
14 have heretofore ordered, and we have given him an opportunity
15 to consider this question. He has made certain counter-
16 proposals which I conclude, as counsel conclude, have no
17 basis in law. I find that Mr. Morris, for whatever personal
18 reasons and whatever personal rationale, has intelligently
19 and deliberately and intentionally chosen to defy the order
20 of the court.

21 Mr. Morris, is there anything unfair about that
22 statement? Or incorrect?

23 Mr. Stone, if you think there is anything incorrect,
24 please tell me.

25 MR. PANZER: I want to point something out to

1 dsgrs

2 Your Honor, if I may. I had a similar situation with Judge
3 Ward, and although the U.S. Attorney has cited 42(a) there
4 is a court of appeals case which came down during the last
5 three months which said in this type of proceeding 42(b) is
6 appropriate and this defendant has to have a hearing before
7 you can hold him in contempt.

8 THE COURT: That's what I want to know. Is there
9 anything to hear, Mr. Stone?

10 MR. STONE: Your Honor, under the circumstances,
11 and perhaps Mr. Panzer is correct in the law, there would
12 be no purpose for a hearing. I think that Mr. Morris was
13 advised about this law, or at least my interpretation of
14 the law, last Thursday. He has made a choice, which I think
15 is his choice. I think he has a right to freedom of choice
16 knowing the consequences and he so made that choice.

17 THE COURT: Mr. Panzer, I take advice from anyplace,
18 especially on a subject which I don't claim to be expert on.
19 What purpose would be served now by giving notice and having
20 a hearing in this case?

21 MR. PANZER: My recollection of the Circuit Court
22 of Appeals was that there might be mitigating circumstances
23 that a defendant might want to present to the judge before he
24 imposes contempt, such as his reasons and if he wanted to
25 call witnesses. The statute mandated a hearing unless he

1 waived it. Of course if he waived it, then there would be
2 no problem. I was in the situation where Judge Ward had
3 imposed a contempt under 42(a) and then this decision came
4 down. We didn't have a hearing. We went back before Judge
5 Ward and I waived the hearing at that point. Then he imposed
6 the sentence properly under 42(a).
7

8 MR. STONE: I think the issue in the case Mr.
9 Panzer is talking about was the J.D.L. case --

10 MR. PANZER: No.

11 MR. STONE: Where there was possible fear that a
12 witness could have, possible emotional blocks that a witness
13 could have. Isn't that the case?

14 MR. PANZER: The case was where he refused to
15 testify and asserted Fifth Amendment rights. He still refused
16 to testify, which I think is almost the very same situation
17 that you have here.

18 THE COURT: Wasn't that in the J.D.L. case?

19 MR. PANZER: No, it was a different case.

20 THE COURT: All right. We can spend as much time
21 as necessary. What is there to hear, Mr. Stone?

22 MR. STONE: The only possible evidentiary point
23 which we could bring forward, Your Honor, is Mr. Morris'
24 assertion that the United States Attorney or the District
25 Attorney in Ohio wrote a letter to the United States Attorney

1 dsgr

2 here expressing a mutual desire to cooperate in the exchange
3 of evidence. I do not know whether that would have any bearing
4 on the Court's decision or not.

5 THE COURT: All right. Are you demanding that if
6 there is such a letter it be produced?

7 MR. STONE: Yes. Mr. Morris has made that request.

8 THE COURT: Mr. Feld?

9 MR. FELD: May I consult with Mr. Feffer?

10 THE COURT: Yes.

11 (Mr. Feld and Mr. Feffer confer.)

12 MR. FELD: Mr. Feffer is more familiar with a
13 letter which may or may not be the letter the defendant is
14 referring to, and perhaps he could address the Court on that
15 particular issue.

16 MR. FEFFER: I am not sure there is a letter as
17 described by Mr. Stone. However, there has been communication
18 back and forth between Mr. Resnick and our office and I myself
19 have talked to Mr. Resnick on the telephone, many times. I
20 also made a trip to Ohio where I spoke to him and there has
21 been exchange of evidence in the sense that we have secured
22 the narcotics that was introduced at the trial in Ohio and
23 other evidence that was used in that case.

24 THE COURT: Who is Mr. Resnick?

25 MR. FEFFER: Mr. Resnick is the prosecutor in Toledo.

1 dsgr

2 He is the individual that prosecuted Mr. Morris in the
3 earlier state trial.

4 THE COURT: So you are stating to the Court that you
5 and he have been cooperating insofar as your concerns overlap
6 and relate to the same general subject?

7 MR. FEFFER: Only in the sense of Mr. Resnick
8 providing us with the evidence, transcripts and these types
9 of things that he had under his custody as a prosecutor in
10 that case, evidence that we obviously intend to offer here.

11 THE COURT: Now, have there been any exchanges of
12 understandings that you would in some way procure evidence
13 helpful to him or supply evidence helpful to him?

14 MR. FEFFER: No, Your Honor. That case is on
15 appeal in Ohio, as a matter of fact, and the trial is finished.

16 THE COURT: Has he expressed any interest in having
17 any handwriting exemplars which we might acquire here in the
18 course of this trial?

19 MR. FEFFER: No, Your Honor. He supplied us with
20 various documents which we wanted to use as a basis for
21 comparison when we secured Mr. Morris' handwriting. These
22 documents were introduced at the trial in Ohio.

23 THE COURT: I take it, however, that it is perfectly
24 clear that if you get exemplars and he later wants to use them
25 in a state proceeding, he could presumably obtain access to

1 dags

122

2 them.

3 MR. FEFFER: Yes, Your Honor.

4 THE COURT: And use them.

5 MR. FEFFER: Yes, Your Honor.

6 THE COURT: Are you representing to the Court that
7 your purpose in asking Mr. Morris to give you these exemplars
8 is not to help Mr. Resnick?

9 MR. FEFFER: That is correct. Our only purpose is
10 to take the exemplars which he provides and compare them
11 against other documents that we have, for the purpose of
12 this case alone.

13 THE COURT: Your purpose is, if you get the exemplars,
14 which seems a little unlikely at the moment, to use them in
15 the trial scheduled to take place before me?

16 MR. FEFFER: That is correct, Your Honor. That is
17 the only purpose we have in mind.

18 THE COURT: Mr. Stone, I am perfectly willing to
19 assume, or even to find as a fact without litigating it, that
20 if these exemplars are supplied and if they turn out to be
21 useful to some other prosecutor in some other place, Toledo
22 or anyplace else, he probably can get them and use them.
23 Indeed, if he wants them, since the Fifth Amendment privilege
24 extends to the states no less than to the Federal Government,
25 he can haul Mr. Morris before a judge there and make the same

1 dsge

2 kind of order that I have made in this case, and it would be
3 valid. All that's left is the hypothesis, if I can call it
4 that, that the prosecutors here are proceeding in bad faith
5 and really doing somebody else's dirty work.

6 I would think that if that ever happened, and I
7 have no reason whatsoever to believe that that's the situation,
8 this could be a ground for suppressing the evidence so
9 obtained. It would be a fraud on the court. But that, I
10 would say, is a terribly remote possibility and is not one
11 that I am willing either to hold a trial on in the middle of
12 this proceeding or to entertain very seriously in light of
13 the representations that have now been made to me in open
14 court by these two Government lawyers. And with deference
15 and obedience to the circuit, I doubt that that is a subject
16 on which any district judge would be required to hold a trial
17 before compelling some defendant on contempt to comply with
18 the standard order for exemplars. However, I ask you as
19 counsel for Mr. Morris, do you think that is something we
20 ought to set down for trial?

21 MR. STONE: Your Honor, I think perhaps the best
22 position here would be to wait until the conclusion of this
23 proceeding.

24 THE COURT: Which proceeding?

25 MR. STONE: I am talking about the total trial we

1 dags

2 have here. It may become a moot issue of more ways that one,
3 practically speaking.

4 THE COURT: The Government says it wants these
5 exemplars for this trial, and you say wait until the trial
6 is over and see if they can have them?

7 MR. STONE: I'm saying wait to see whether we
8 should have a trial on the contempt issue or not.

9 THE COURT: I am much more interested in Mr. Morris'
10 complying with the law than in punishing him for not complying.
11 Frankly, if I sentence him to a substantial term in prison,
12 which seems to be looming in the near future, and he then on
13 reflection, even though he may be serving a long term some-
14 where else, decides that he is going to comply, timely, while
15 it still makes a difference, I would be very much disposed to
16 listen sympathetically for an application to vacate his
17 sentence. I am not going to wait until some later time to
18 do this and I'm not interested at this moment in subtle
19 distinctions between civil and criminal contempt. The
20 main objective is to get the evidence one way or another and
21 have it available for the trial.

22 MR. STONE: I think another proposition that may
23 come up is a question of what documents the Government has
24 which they obtained in the Ohio case for which Mr. Morris
25 has never claimed either ownership, possession, or claimed

1 to have been the person who has written those documents.
2 Accordingly, not ever having made that claim in Ohio, he
3 was never a person who could have moved to suppress those
4 documents. Now we have these documents. I assume they are
5 some forms of handwriting, according to Mr. Feld and
6 according to the information Mr. Morris gave me that he
7 learned from the Ohio trial, documents which the Government
8 may offer in evidence here and which they claim may belong
9 to Mr. Morris in one way or the other. Accordingly, if that
10 is their claim, then I think the Government should have the
11 burden first to establish whether they were taken from
12 Mr. Morris in a legal fashion.
13

14 I was not able to make a motion to suppress because
15 I did not claim a proprietary interest in any documents which
16 the Government obtained. Now, the Government tells me they
17 have these documents which they can establish a proprietary
18 interest, according to them, if the handwriting turns out
19 successfully. I claim rather than have them go first against
20 the handwriting, we should first go against whether the
21 Government obtained these documents legally or not.

22 THE COURT: Look, you don't really need the Govern-
23 ment to tell you whether you are going to claim a proprietary
24 interest. You have been sitting here and hearing about --

25 MR. STONE: That is correct. That is why I'm not

1 dags

2 too keen in going in a certain direction.

3 THE COURT: I don't care what you are too keen
4 about, but nothing that you have just said, with all respect
5 to you, seems to me to have the remotest bearing on the
6 question before me, which is, should Mr. Morris be held in
7 contempt for refusing to obey the order to give exemplars.
8 If you want to claim a proprietary interest in some pieces of
9 paper, you just go ahead and claim it. And in the course of
10 this miscellaneous proceeding, which may go on for a couple
11 of weeks, you will be heard. But what you just said is not
12 useful.

13 Now, is there any other thought, remote or direct
14 or indirect, to suggest a practical reason why there should
15 be any additional notice or any kind of trial-type hearing
16 under Rule 42(b) before Mr. Morris is finally adjudicated in
17 contempt and sentenced therefor?

18 MR. STONE: I can think of none, Your Honor.

19 THE COURT: I will not issue any more formal notice
20 that Mr. Morris has already had and you have had, Mr. Stone.
21 What I'd like to do is this: I'd like if someone knows any
22 reason why not, to postpone this for one more day to give you
23 a chance to use your imagination and see if there is any
24 legitimate reason why Mr. Morris should have a trial on this
25 contempt issue. If he should have it, he will get it. And

1 dags

2 more importantly, to see whether on the basis of your advice
3 Mr. Morris may not want to reconsider this subject, because
4 I am informed informally, and I guess correctly, that he has
5 now, unless he can get a reversal, a long prison sentence.
6 Is that correct?

7 MR. STONE: That is correct.

8 THE COURT: If it is a sentence imposed in some
9 other court at some other time, there is reason why hope
10 springs eternal. That sentence may be changed, it may be
11 shortened. He may get paroled. There is no telling what
12 may happen. And it should be perfectly clear to Mr. Morris
13 that if he stands there still in this case with a lot of
14 other defendants and chooses flatly to defy the order of
15 this Court, I will be very sympathetic to the idea of giving
16 him a very substantial sentence which will be in addition to
17 and separate from and beyond any sentence he now has somewhere
18 else. So whatever happens with that other sentence, if he is
19 subject to an additional sentence here, since he still seems
20 to be a young and healthy man, he ought to have in mind
21 that this would be a separate and additional burden for him
22 to cope with. And with all respect to him, I believe he
23 will be kidding himself if he figures it doesn't make any
24 difference, because someday when he counts up those days
25 and months locked up, and he has these, he may find that he

1 dsgs

2 made a regrettable choice on this day in the Southern District
3 of New York.

4 It is therefore my hope for his sake and my advice
5 to him that he will very soberly reconsider his judgment
6 before I proceed, as I am going to proceed in not too much a
7 later time than now, to conclude this subject. If he stands
8 on his position, which he has sort of a right to do according
9 to Justice Holmes, I will sentence him.

10 MR. STONE: I think he has been well advised,
11 Your Honor.

12 THE COURT: We will put it off until tomorrow and
13 Mr. Feld, please raise it again then. Have the right
14 citations, the right forms, and the right procedures, and
15 a clear awareness of the maximum sentence, and we will go
16 forward.

17 I think Mr. Guarino was on the stand.

18 L E O L U C A G U A R I N O , previously sworn, resumed.

19 CROSS-EXAMINATION (Continued)

20 BY MR. FELD:

21 Q Mr. Guarino, may I remind you that you are still
22 under oath.

23 A Yes.

24 Q Just so the record is clear, would you tell us
25 whether you instructed Dellacava to purchase the suitcase

which he said he purchased at Korvettes?

A No.

Q Do you know whether Mr. Capra instructed Mr. Dellacava to purchase that suitcase?

A I don't know that.

MR. SLOTNICK: Objection, Your Honor. It calls for a conclusion of the witness.

THE COURT: Overruled.

Q Now, after Mr. Dellacava -- Do you know?

A I don't know.

Q That was the answer in response to my previous question?

A Right.

Q Now, after Mr. Dellacava, according to his testimony, purchased the suitcase and put the narcotics in and delivered it to Mr. Ramos and the suitcase went to its destination, would it be fair to say that your concern was at that time whether the buyer was going to pay the balance of the price for the narcotics?

A That plus whether it was going to go through as to quality and quantity.

Q In other words, whether the buyer would pay and in the event that he was unsatisfied with the narcotics, that the narcotics would be returned to you. Is that

correct?

A Correct.

Q And that's all that you were concerned about at that time; is that correct?

A That is correct.

Q Now, after Mr. Dellacava bought the suitcase, did he show it to you?

A I don't recall.

Q Do you recall whether you saw it?

A Not really, no, I don't.

Q Well, this was a very important suitcase to you, wasn't it?

MR. McALEVY: I object to that, Your Honor. Now he is categorizing what it was to my client's state of mind. It is quite unfair.

MR. FELD: Your Honor, defense counsel asked a number of questions on direct examination relating to state of mind, and I think it is an important issue here.

THE COURT: Overruled.

MR. SLOTNICK: My objection is to the form of the question. I think it is argumentative.

THE COURT: Overruled.

A The question, please.

(Question read.)

A Certainly.

Q But you don't recall ever seeing it?

A No.

Q Now, do you recall whether Mr. Capra saw it? Did he ever tell you that he saw it?

A I can't answer it for Mr. Capra.

Q Did he ever tell you he ever saw it?

A Not that I recall.

Q Now, did you ever see the suitcase that was opened up in Toledo, Ohio after it was opened up?

MR. McALEVY: I object to that question.

THE COURT: Yes, on what ground?

MR. McALEVY: First of all, if I understand it, the question is did you ever see a suitcase that was opened in Toledo, Ohio.

THE COURT: "The suitcase."

MR. McALEVY: I object to the form of the question.

THE COURT: Mr. Slotnick?

MR. SLOTNICK: Same objection, Your Honor, and I might indicate to the Court that I make a request for production of the suitcase.

THE COURT: Overruled.

Q Did you ever see the suitcase that was opened up in Ohio after it was opened up?

A Isn't that the same question?

MR. FBITELL: I will object unless we know when it was opened up. Fix a date, time and place.

THE COURT: Overruled.

Q After October 28, 1971.

A Did I see the suitcase after it was opened up in Toledo, Ohio?

Q Yes.

A No.

Q So then as a matter of fact you don't know whether the suitcase that Mr. Dellacava bought in New York was the same suitcase that was opened up. Isn't that right?

A I have no idea.

Q But didn't you submit an affidavit to this Court saying that the suitcase that was opened up in Ohio was your suitcase?

A Correct.

MR. FELD: No further questions.

REDIRECT EXAMINATION

BY MR. McALEVY:

Q Mr. Guarino, you presently stand under indictment in this court, do you not?

A I do.

Q Are you familiar with the counts that you have been

indicted on?

A Yes, I am.

Q In your own mind do any of those counts have anything to do with a certain shipment of heroin that was found in Toledo back in October of 1971?

A They do.

MR. FELD: Objection.

THE COURT: What is the ground of the objection?

MR. FELD: It is irrelevant to this proceeding as to his understanding of what the charges are in the indictment.

THE COURT: Sustained.

Q Are you being charged by the Government of conspiring --

THE COURT: I know what he is being charged with. I don't understand what the point of his understanding of this indictment is at this time. Can you tell me?

MR. McALEVY: Judge, the basis of that question, I fail to see how the Government can stand here tongue in cheek one one hand saying that the man didn't own the suitcase and on the other hand say he is guilty of conspiring to possess that suitcase full of heroin out in Toledo two years ago.

THE COURT: And you want him to explain it to you from the witness stand.

MR. McALEVY: That's what the man is charged with,

1
2 Your Honor.

3 THE COURT: Objection sustained.

4 Q Did you learn at any time how the heroin was sent
5 to Toledo?

6 A I saw Ramos subsequent to him making the move to
7 Toledo and he told me that he had brought the narcotics by some
8 means to Toledo.

9 Q Did you ever find out what particular type of
10 parcel was used to transport the heroin to Ohio?

11 A He told me it was something a little larger than an
12 attache case.

13 Q Now, have you had other discussions with co-defendants
14 concerning, other than Mr. Ramos, concerning how the heroin got
15 from New York to Toledo?

16 A Certainly. After the seizure we discussed what had
17 taken place.

18 Q And did you learn what type of parcel was used to
19 get those goods to Toledo?

20 A I was also told that it was something a little
21 larger than an attache case.

22 Q Do you know to what particular locale it was brought
23 to? Did you ever learn that?

24 A Well, I learned that after the seizure in Toledo.

25 Q At some time you learned it?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q And is that the same suitcase that the Government is speaking about and that you signed an affidavit about in this case?

A Well, I'm under that belief.

MR. FELD: Objection.

THE COURT: What is the ground?

MR. FELD: He has not laid a foundation to know what the --

THE COURT: We are beating sort of a dead horse. At some point, though I have not ordered it yet, this suitcase is going to turn up here in the course of this proceeding to suppress and then a lot of this questioning is going to become interesting but academic. I don't really know what you are trying to do. One man has described the suitcase and made a prima facie case that he bought it. Now, if it turns out to be a red ladies cosmetic bag, that case is going to be in trouble. If it turns out to be the kind of suitcase he described, then we have what we have, but I don't want you gentlemen to fail to enjoy yourselves.

Go ahead.

MR. McALEVY: On the basis of Your Honor's ruling I have no further questions.

MR. SLOTNICK: I would formally at this time, in

view of what Your Honor has just said, move for the production --

THE COURT: Stop moving for the same thing all over and over again. Before the hearing is concluded, I told you, we will have it. Your motion is denied.

MR. SLOTNICK: Respectfully except.

THE COURT: You don't have to except in the Federal Court where you are admitted. You have an automatic exception to adverse rulings.

MR. SLOTNICK: I'm aware of that.

THE COURT: Please remember that for the rest of this hearing.

MR. SLOTNICK: I will, Your Honor.

RECROSS-EXAMINATION

BY MR. FELD:

Q Didn't you testify yesterday that you didn't know what Mr. Ramos did with the narcotics after he got it?

MR. McALEVY: I object to this. It is out of the scope of the redirect.

THE COURT: Sustained.

MR. FELD: No further questions.

THE COURT: All right, Mr. Guarino. Thank you.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: Is there anything else in support of

the motion?

MR. SLOTNICK: I would ask the Government to produce any exculpatory material with regard to the subject of the motion as presented by the defendants, Your Honor.

THE COURT: Do you have any exculpatory material that you can think of offhand in response to this motion?

MR. FELD: Your Honor, we have no exculpatory information.

THE COURT: All right. Let me say that if, before I have ruled on the motion to suppress, you think of anything that is or might be exculpatory, you deliver it and inform the Court of it and we will make it part of this record.

MR. FELD: Yes, Your Honor.

MR. SLOTNICK: May I aid the Government, perhaps, Your Honor, without attempting to seem impertinent?

THE COURT: No. This motion was made almost two weeks ago. The Brady decision is several years old. I don't like this kind of ad libbing. You may not aid the Government. Please be seated. I've told them what they must do. If you had this kind of motion to make, you don't stand up at eleven o'clock in the courtroom and make it and have a lawyer who is almost as busy as you try to figure out what is in his files. If you have something you want to aid him with, deliver him a writing, a letter, motion, and give him a copy and do it

1 dags

138

2 in an orderly way.

3 Do the movants have any other evidence to offer at
4 this time?

5 MR. SLOTNICK: Defendant Capra has no further evidence
6 to offer.

7 MR. FEITELL: Nor does the defendant Dellacava.

8 MR. McALEVY: Nor does the defendant Guarino.

9 THE COURT: Mr. Feld?

10 MR. FELD: The Government has nothing at all.

11 THE COURT: At this time you must offer that
12 suitcase because I want to see it. Where is it?

13 MR. FELD: Your Honor, we didn't anticipate that it
14 was going to be needed this morning. We will have it here
15 this afternoon. Is that sufficient?

16 THE COURT: All right. Have it here this afternoon.
17 We will still be here and we will mark it as an exhibit in
18 this proceeding. The main thing is for me to have a look at
19 it and see how it compares to whatever testimony I've heard
20 about its character.

21 I think, since the issues are fairly well defined
22 and the factual hearing has not been very long, it is fair to
23 ask that each side let me have a memorandum in support of its
24 position affecting this motion by Monday. It does not need to
25 be elaborate. It just needs to state what you claim are the

1 dsgr

2 facts and why you claim the suitcase and its contents should
3 or should not be suppressed for use as evidence in this case.

4 I will probably decide the motion fairly expeditiously,
5 though I may postpone filing any opinion until later on, for
6 reasons which I feel are fairly evident.

7 Now, we have another motion to suppress relating to
8 the automobile search at the time of the arrest of Mr.
9 Dellacava. Are we ready to go forward with that?

10 MR. FELD: Yes, we are ready, Your Honor.

11 THE COURT: Let's take about five minutes and then
12 we will proceed with that motion.

13 MR. STONE: Since that motion doesn't concern
14 Mr. Morris, if it is agreeable with the Court I have discussed
15 it with Mr. Morris if I could leave this morning to tend to
16 some other business, Mr. Panzer, whose client is not affected,
17 will cover for me. Mr. Panzer in turn has a proceeding this
18 afternoon that I would gladly cover for him. Both clients
19 have agreed to that.

20 THE COURT: All right. That is agreeable with me,
21 too, then.

22 MR. STONE: Thank you, Your Honor.

23 (Recess.)

24 THE COURT: Mr. Curley.

25 MR. CURLEY: Yes, Your Honor. My client has been

1 dags

2 brought to court on a writ and people who are friends of his
3 who put up bail money on this case would like to have their
4 collateral passbooks back. On their behalf, with no objection
5 from my client, he joins in their request, we would like to
6 have the bail as to Carmelo Garcia exonerated so that the
7 people can have their security back and have some new bail in
8 the same amount or any amount convenient to all sides set.

9 Mr. Garcia would remain here for the remainder of
10 this trial.

11 THE COURT: What is the advantage of exonerating
12 and setting new bail in the same amount?

13 MR. CURLEY: It doesn't make any difference to us
14 what the amount is since he is not desirous of posting bail.
15 We would like some bail set and any amount would hold him
16 since he does not intend to post it because he is serving a
17 state sentence.

18 THE COURT: Any objections?

19 MR. PEPPER: No, Your Honor.

20 THE COURT: Do you need a written order?

21 MR. PEPPER: If his bail is set in the same amount
22 there would be no objection to exonerating the old bail.

23 THE COURT: Do you need a written order?

24 MR. CURLEY: No, Your Honor.

25 THE COURT: Your motion is granted. What is the

1 dags

141

2 amount?

3 MR. CURLEY: \$5,000 cash or surety.

4 THE COURT: Bail is set on that amount on the
5 application of the defendant Garcia with the concurrence of
6 the Government.

7 MR. CURLEY: Thank you, Your Honor.

8 THE COURT: Are we ready to proceed with the motion
9 of Mr. Dellacava to suppress dated August 22, 1973?

10 MR. FELD: Yes, Your Honor.

11 MR. FEFFER: The Government calls David Samuel.

12 MR. FEITELL: I move to exclude all witnesses
13 except -- all witnesses testifying for the Government in
14 connection with this proceeding, Your Honor.

15 THE COURT: Will the defendant Dellacava be
16 presenting any witnesses in support of his motion?

17 MR. FEITELL: No, Your Honor.

18 THE COURT: All right, that motion is granted.

19 If there are any other witnesses who will be in
20 this proceeding, please have them excused.

21 MR. FEITELL: You are asking about witnesses. I
22 am reserving the right to call Mr. Dellacava.

23 THE COURT: Yes.

24 D A V I D S A M U E L , called as a witness on behalf
25 of the Government, after being first duly sworn,

1 dsge

2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. FELD:

5 Q Mr. Samuel, what is your occupation?

6 A Special agent with the Drug Enforcement Adminis-
7 tration.

8 Q And how long have you been employed by that agency?

9 A Two years.

10 Q Do you know the defendant Stephen Dellacava?

11 A Yes, I do.

12 Q Is he sitting in the courtroom today?

13 A He is.

14 Q Would you identify him, please?

15 A He is the gentleman in the blue suit with the striped
16 shirt and the glasses.

17 MR. FELD: May the record reflect that the witness
18 has correctly identified the defendant.

19 Q Directing your attention to April 13 and the early
20 morning hours of April 14, 1973, did you have occasion to
21 participate in the arrest of Mr. Dellacava?

22 A Yes, I did.

23 Q And by what authority was that arrest made?

24 A It was based on an arrest warrant issued to appre-
25 hend Mr. Dellacava based on an indictment.

1 Q Was that a federal arrest warrant?

2 A Yes.

3 Q Did you have a copy of that arrest warrant with you?

4 A We did.

5 Q Now, tell us when and where the arrest took place.

6 A Mr. Dellacava was placed under arrest on 86th Street,
7 at the intersection of 86th Street and Lexington Avenue,
8 Manhattan, approximately 2:05 in the morning on April 14, 1973.

9 Q And was he in an automobile?

10 A Yes, he was. He was in a 1973 Oldsmobile 98 sedan
11 which was registered to him, and he was arrested from that
12 vehicle.

13 Q And how many other agents were participating in the
14 arrest?

15 A There was Group Supervisor Becknar and two New York
16 City police. Would you like their names?

17 Q What are their names?

18 A Timothy Restivo, R-e-s-t-i-v-o, and George Eaton,
19 E-a-t-o-n.

20 Q Now, tell us your best recollection of the
21 circumstances surrounding the arrest.

22 A As I stated before, at approximately 2:05 we stopped
23 the vehicle and placed Mr. Dellacava under arrest. At that
24 time we were blocking traffic and there was a fairly large
25

crowd beginning to form so we proceeded to the vicinity of the New York Youth Club boat basin. I think it is on 79th Street. We took Mr. Dellacava's car and the two vehicles into that location. At that time I advised Mr. Dellacava that he was under arrest and charged with violation of the federal narcotics laws and I advised him of his constitutional rights. At that time we intended to seize the car -- excuse me, impound the car for safekeeping. We couldn't leave it on the street. We searched it for valuables.

Q Now, is this a routine procedure that agents follow in connection with arrests of persons in automobiles?

A When an automobile is involved --

MR. FEITELL: Objection as to what constitutes a routine procedure. That could be conclusory on the part of the agent. That is the issue before the Court, the legality of what developed here and the authenticity of the conduct of the case has to be established on legal grounds, not in terms of what some officer might have been doing on a regular basis, albeit incorrectly.

THE COURT: Well, there are several objections there. Your last legal point I will think about, but as to the evidentiary objections, they are overruled.

You may answer.

A State the question again, please.

1 Q Is it a routine practice that you and other agents
2 of the Drug Enforcement Administration follow in arresting --
3 when you arrest persons in an automobile, that you examine the
4 contents of the automobile inventory?
5

6 A Yes, it is. We search the vehicle for valuables,
7 that way we prevent any type of complaint arising if the
8 vehicle is impounded and somebody might state we stole some-
9 thing and we always have proof that we didn't because we
10 inventory the property.

11 Q That in turn helps to protect the valuables that
12 you find?

13 A It protects both sides.

14 Q Now, tell us what you found in the automobile and
15 where you found it.

16 A At approximately 2:30 in the morning, Sergeant
17 Restivo in my presence found a brown gym bag.

18 Q Was the defendant present?

19 A Yes, he was. He was present at the time. We found
20 a brown gym bag which he opened and we found \$13,999 inside.

21 Q In currency?

22 A United States currency.

23 Q And what else did you find?

24 A I discovered a plastic bag heat-sealing machine,
25 Sears and Roebuck. It is called Meals in a Minute. It seals

plastic bags.

Q Where was that found?

A In the trunk.

Q Was that in the gym bag?

A No. It was lying next to the gym bag.

Q Lying next to the gym bag. Now, was any heroin found in the gym bag?

A Nothing was found by us, but it was submitted to the laboratory for testing. It came back with heroin traces.

Q Was a wig found?

A Excuse me?

Q A wig.

A I don't recall.

MR. FELD: You may inquire.

CROSS-EXAMINATION

BY MR. FEITELL:

Q The arrest warrant, do you have it with you?

A No, I don't.

Q Do you know where it is?

A I believe a copy would be in the United States marshal's office. I think there is a copy in my office.

Q Where did that arrest warrant issue out of?

A Southern District of New York.

Q And did you have a copy of it in your possession

1 at the very time that you made the arrest?

2 A Yes, we did.

3 Q And when you stopped the vehicle did you say anything
4 to the defendant?

5 A Told him he was under arrest.

6 Q You yourself did?

7 A No, I didn't.

8 Q Who told him he was under arrest?

9 A I believe it was either Sergeant Restivo or Detective
10 Eaton.

11 Q Did you tell him what he was under arrest for?

12 A I didn't hear him say it, so I don't know if he
13 did or not. I told him later on.

14 Q Where did you tell him?

15 A At the boat basin.

16 Q And did you have any other discussion with him at
17 that time at the boat basin in respect to your authority to
18 arrest him?

19 A I told him that I was a federal narcotics agent
20 and a warrant had been issued for his arrest. That is what
21 he was arrested for.

22 Q Did you have a warrant with you at the time?

23 A The warrant was with us, yes.

24 Q But you didn't show it to him; right?

1 A I don't recall.

2 Q You have no recollection of having shown it to him;
3 right?

4 A I don't remember showing it to him.

5 Q Who did you get the warrant from?

6 A The warrant was issued early in the evening at a
7 meeting we had. We had packages issued for each defendant
8 and in each package was a copy of the warrant.

9 Q You received the package relating to the defendant
10 Dellacava?

11 A Yes, I did.

12 Q And did you examine the warrant?

13 A Yes, I did.

14 Q And did you note the identity of the issuing
15 officer with respect to the warrant?

16 A No, I didn't.

17 Q You said you read the warrant.

18 A Yes, sir.

19 Q And what did the warrant say?

20 A Commanding the officer to bring forward Stephen
21 Dellacava, but I didn't read the name or I don't remember the
22 name of the magistrate who signed it.

23 Q Did you look to see whether it was signed?

24 A I don't think so, no.
25

Q So you don't know how old the warrant was when you got it, do you?

A I can state that I know the warrant was a day old because I was involved in the case.

Q How do you know it was a day old?

A I know when the indictments were issued.

Q When were the indictments issued?

A To the best of my recollection I believe it was the 13th of April.

Q Do you know if the warrant was issued before or after the indictment came down?

A Afterwards.

Q How do you know that?

A I was told that.

Q So that's hearsay as to you; right?

A Yes.

Q What did you do with the arrest warrant?

A We took it in the vehicle with us.

Q But you didn't show it to the defendant when you stopped the vehicle; right?

A Not when we stopped the vehicle, no.

Q And after you got through processing the defendant did you do something with the arrest warrant? Did you file it somewhere?

1 A It was filed I believe at the time of arraignment.

2 Q Do you know where that arrest warrant is now?

3 A The original?

4 Q The one you had.

5 A In our office right now.

6 Q Your office?

7 A That's right.

8 Q Where is your office?

9 A 555 West 57th Street.

10 MR. FEITELL: May I ask the Government to produce
11 a copy of it, should the Government have a copy, or the
12 original?

13 MR. FELD: We will produce a copy. We don't have
14 one in the courtroom now, Your Honor. We will get one and
15 have it before the day concludes after the luncheon recess.

16 Q Now, you didn't know what Stephen Dellacava looked
17 like, did you?

18 A Yes, I did.

19 Q You had been working on this case before you
20 received that package; right?

21 A Approximately one month.

22 Q So you knew where the defendant Stephen Dellacava
23 lived; right?

24 A I've never been to his house, no.

1
2 Q I said you knew where he lived; right?

3 A No, I probably didn't know where he lived.

4 Q You were first assigned to the case a month before
5 you made the arrest?

6 A That's right.

7 Q And in connection with your duties in the case did
8 you have occasion to surveil?

9 A Yes, I did.

10 Q And in the course of your surveillance did you ever
11 physically observe the defendant Dellacava?

12 A No, sir.

13 Q Never saw him at all?

14 A No, sir.

15 Q Were you shown photographs of the subject before you
16 embarked on your surveillance?

17 A Yes, I was.

18 Q And you had those copies with you the night you
19 went out to arrest him; is that right?

20 A Yes, we did.

21 Q You had heard that the defendant Dellacava frequented
22 a bar known as Dianne's Bar on 103 and 104th Street and
23 Second Avenue?

24 A Yes, sir.

25 Q Were you ever up in that neighborhood to surveil

1 in connection with the case?

2 A Never to surveil. Just driving by.

3 Q Well, when you would drive by, were you driving by
4 in connection with the case?

5 A Yes, sir.

6 Q Did you ever look out of your window to see what
7 you could see over at Dianne's Bar?

8 A Yes, sir.

9 Q So that you were using your eyes and your automobile
10 in connection with the case; right?

11 A Right.

12 Q So you were performing surveillance; right?

13 A Yes.

14 Q About how many times did you pass by Dianne's Bar
15 in that month?

16 A Five times.

17 Q Did you ever see the defendant Dellacava in or
18 around that bar at that time?

19 A Never laid eyes on him until the night I arrested
20 him.

21 Q Had you been told that Dianne's Bar -- Withdrawn.
22 You had been told, hadn't you, that Dianne's Bar
23 was the place that he frequented?

24 A Yes, sir.

1
2 Q And have you ever had occasion in the course of your
3 month's activity to listen to any wiretaps?

4 A No, sir.

5 Q Were you given any information as to other places
6 that the defendant frequented?

7 A The night we arrested him he was located at Bachelors
8 Three, which was his known hangout.

9 Q So the day you made this arrest, that is the 12th
10 of April; right?

11 A 13th.

12 Q You made the arrest the 13th going into the 14th;
13 you made it the 14th, 2:05, Lexington on 86th?

14 A Yes.

15 Q On the 12th you received this bundle of materials?

16 A No, sir. On the night of the 13th.

17 Q The night of the 13th?

18 A Yes.

19 Q What time did you receive it?

20 A I would say approximately 11:30, maybe even 12:00,
21 on into the early morning of the 14th.

22 Q Now, who was the individual who gave you the package
23 of materials?

24 A I don't recall. There were approximately 200 men
25 in the room.

Q In connection with the receipt of the materials, did you receive any instructions as to how you were supposed to execute your responsibilities?

A Well, a general plan was laid out as to the use of caution and all that.

Q Well, were you told where to go and when to go to arrest the defendant Dellacava?

A Our particular team was informed that Dellacava was currently under surveillance at Bachelors Three. We left the office and went right there.

Q Before you left your offices, which were located on 55th Street --

A 57th Street.

Q 57th Street?

A Yes.

Q What time did you leave your offices?

A I would say approximately 1:00 a.m.

Q You got a phone call that somebody had seen Dellacava at Bachelors East; right?

A Bachelors Three.

Q Located where?

A I believe it is on Lexington in the 60's, but I really couldn't be sure what the address is.

Q And did you receive that call?

A Not personally.

Q What other information came -- did it come by telephone?

A That's right.

Q And did you subsequently find out that there had been a number of agents at the scene prior to your arriving there?

A There were -- we joined Sergeant Restivo and Detective Eaton at the scene there.

Q Well, were there any other federal agents or city or state police at that place, to your knowledge?

A Yes, there were.

Q In addition to Restivo and you, who else was there?

A They were in vehicles. I didn't see who was in each car.

Q Did you double-park when you came nearby?

A We parked approximately a block away and walked up to Restivo and Eaton's car.

Q You knew you were supposed to meet Eaton and Restivo; right?

A Yes.

Q You had had previous dealings with them in connection with the case?

A Yes.

1
2 Q You knew of your own knowledge based on what you
3 heard that all the people you knew in this case, all the
4 investigative confreres, state and federal, the one person
5 who knew most about the defendant Dellacava was Mr. Eaton;
6 right?

7 MR. FELD: Objection.

8 THE COURT: What is the ground of the objection?

9 MR. FELD: I don't see how it is relevant as to
10 his opinion as to who knew the most about the defendant
11 Dellacava.

12 THE COURT: What is the relevance of that, Mr.
13 Feitell?

14 MR. FEITELL: I will proceed with this in a different
15 fashion. I'll withdraw the question.

16 THE COURT: All right.

17 Q You knew that Detective Eaton had been working on
18 the case for some time; correct?

19 A That is correct.

20 Q And did you have discussions with Detective Eaton
21 in the month of your engagement in connection with the case
22 regarding Dellacava?

23 A Yes.

24 Q And he told you certain things about Dellacava;
25 right?

1
2 A Yes.

3 Q He told you his alleged nickname? Did he ever
4 mention the name Beansie?

5 A Yes.

6 Q Also known as Steve?

7 A Yes.

8 Q And did he give you a physical description of what
9 he looked like?

10 A Yes.

11 Q Did he also happen to furnish you with any photo-
12 graphs of Mr. Dellacava?

13 A I can't recall who gave me the photographs.

14 Q What did he tell you to do in connection with the
15 case when you spoke to him?

16 A He didn't tell me to do anything because I wasn't
17 taking orders from him.

18 Q Now, when you got to the area of Bachelors Three,
19 what time was it?

20 A I would say approximately 1:30 in the morning.

21 Q And you knew where to go to see Detective Eaton
22 and Detective Restivo; is that right?

23 A Yes, we did.

24 Q That was by virtue of information communicated by
25 telephone that you received at your headquarters; is that

1
2 correct?

3 A I believe the information was that they had located
4 Dellacava and then when we got in our car we had radio
5 communication.

6 Q Do you know how it was they were able to locate
7 Dellacava?

8 A To the best of my knowledge they had been surveilling
9 him a good part of the day.

10 Q They had been following him; is that correct?

11 A That is correct.

12 Q So they knew of his whereabouts and his movements?

13 A That is correct.

14 Q Didn't they tell you when they got there that they
15 had seen him go into the premises?

16 A I don't recall that statement. They told me he was
17 in the premises.

18 Q Didn't they tell you that because they had been
19 surveilling him during the day and tailing him they knew that
20 he had come to the premises; didn't they tell you that?

21 A I would assume they did.

22 Q And that they parked in another place nearby after
23 he went in; right?

24 A That's right.

25 Q So that they knew he had gone into the premises;

correct?

A That's right.

Q And when you arrived there did you have a discussion with them?

A Yes, we did.

Q And what did you talk about?

A I believe the discussion concerned the fact that Mr. Dellacava was inside, who else was inside, when we would arrest him, along that nature.

Q Well, you had the warrant in your pocket; right?

A Right.

Q And you knew that you had a direction to go in and arrest Stephen Dellacava; right?

A Excuse me?

Q You had a direction to go in and arrest Stephen Dellacava? A warrant; right?

A We had the warrant, that's right.

Q Yes. And you told me before that Detective Eaton wasn't your superior; right?

A That's right.

Q Neither was Detective Restivo; right?

A That's right.

Q But you didn't go inside to execute the warrant; is that right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No, we didn't.

Q You didn't?

A Nobody did.

Q Did you ever say you wanted to go in to arrest the defendant?

A No.

Q When you talked to Detective Eaton did he tell you in words or substance it would be wiser to wait until Dellacava came out?

A I believe in the discussion we decided --

Q Yes or no, please.

A I don't remember if he did or not.

Q Did you go in the premises to take a look for yourself?

A No, sir.

Q You didn't want to confirm for your own good understanding that the defendant Dellacava was inside?

A I didn't feel it was necessary.

Q Did you have a photograph with you at the time?

A Yes, sir.

Q How long did you maintain -- where did you stay during the period while you were waiting to make a decision as to what you were to do?

A Our car was parked on a street off of Lexington

1 Avenue. We didn't have a view of his car or of the bar.

2 Q Well, you spoke to Detective Eaton about where his
3 car was parked, didn't you?

4 A Yes, sir.

5 Q Where did Eaton tell you where his car was parked?

6 A Also on Lexington Avenue north of Bachelors Three,
7 approximately two blocks, three blocks.

8 Q Three blocks?

9 A Two or three blocks.

10 Q Well, did you make any notes as to where you first
11 observed his car parked?

12 A No, sir.

13 Q How long, to your knowledge, were Restivo and Eaton
14 outside or in or around Bachelors Three, Bachelors East,
15 whatever it is called?

16 A I can only guess. I don't know for sure.

17 Q Before you got there?

18 A I don't know for certain.

19 Q Well, did you ever find out from them what time
20 they themselves had arrived at the scene and Dellacava had
21 gone in?

22 A We may have discussed it but I don't remember now.

23 Q Well, in the course of your dealings with Detective
24 Eaton you had found out from him what type of car Dellacava
25

drove, hadn't you?

A I can't say it was Detective Eaton who told me.

Q Well, you knew from your collective intelligence that you had gleaned during the course of your one month's involvement in the case that he drove a '73 Olds sedan; right?

A That is correct.

Q You knew the registration number for it, too, didn't you? That was also a part of your file; right? You got copies of the records with the New York State Motor Vehicle Bureau; right?

A We had that information.

Q Yes. And then in the course of careful police procedure, did you go up to check the location of the vehicle that Detective Eaton had given you?

A We drove by.

Q Took a look at it; right?

A Yes.

Q Part of your surveillance in connection with the investigation; right?

A Right.

Q You saw where it was parked; right?

A Yes, sir.

Q How long did you stay in the area -- Withdrawn.
During the period of your surveillance outside of

Bachelors, where was Detective Eaton?

A Detective Eaton and Sergeant Restivo were parked north of Dellacava's car on Lexington.

Q Were they parked at the curb or double-parked?

A They were parked at the curb.

Q Were they pointed in the same direction as Dellacava's car?

A Yes, they were.

Q Now, were did you locate your vehicle after your discussion with Detective Eaton when he told you where Dellacava's car was?

A We were south of his car, facing west, on a street off Lexington Avenue. I don't recall what street it was.

Q So that Dellacava's car was parked two or three blocks north of Bachelors; right?

A That is correct.

Q Which is on Lexington, which is on the west side of Lexington; is that right?

A That's right.

Q And your car was parked north or south of Bachelors?

A North of Bachelors Three.

Q And into what street was it parked?

A It was in the 60's.

Q Did you leave it there?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A We sat in it.

Q Did you have an arrangement with Detective Eaton as to how to execute the warrant?

A We had decided beforehand that we would follow Mr. Dellacava away from the bar.

Q You were going to wait until he got into his car; right?

A That's right.

Q Now, did you observe Dellacava in the bar at any time?

A No, sir.

Q From the street?

A No, sir.

Q Were there any other agents besides you, your brother agent Restivo, and Eaton in the environs of Bachelors?

A Inside? I couldn't answer that. I don't know.

Q You don't know?

A No, sir.

Q There may have been; right?

A There may have been.

Q Did you see any double-parked vehicles in or about Bachelors; about Bachelors, rather.

A I don't recall.

Q Did you see any agents on the street, known to you

as agents?

A There were agents all over.

Q There were agents all over the area; right?

A Yes, sir.

Q Quite a few, as a matter of fact; true?

A Yes, sir.

Q And you recognized some of them; right?

A I recognized it was agents but I couldn't remember who they were right now.

Q Connected with narcotics law enforcement in one way or another; correct?

A Yes, sir.

Q And to your knowledge, in Bachelors or about Bachelors were there other subjects in connection with this case?

A Yes, sir.

Q About how many?

A To the best of my recollection it was two or three others.

Q And where were they?

A They were also in Bachelors Three.

Q And do you know their names?

A The only one I remember now is Thomas Lentini.

Q What is the name?

1
2 A Thomas Lentini.

3 Q Do you know if any other arrests were made that
4 night or thereafter in connection with the total narcotics
5 investigation of which you were a part, which dealt with
6 persons who were in that bar at the time you were conducting
7 your surveillance; apart from Mr. Lentini and Mr. Dellacava,
8 can you name one?

9 A Who were also in that bar?

10 Q Yes, who, as they say, were locked up in connection
11 with these narcotic cases.

12 A The only two I knew were Dellacava and Lentini.
13 I can't remember the other names.

14 Q Are you telling me there were other person in there?

15 A I seem to remember.

16 Q But you are not sure?

17 A I'm not sure.

18 Q Do you know if there were agents in the bar,
19 Bachelors?

20 A I couldn't be certain.

21 Q Where did you see any other agents apart from the
22 four we have mentioned, which includes yourself?

23 A On the street, in cars.

24 Q Where were they positioned?

25 A They were parked all around the bar.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Parked all around the bar?

A Yes, sir.

Q Sitting in vehicles?

A Yes, sir.

Q Did you have any conversations with them?

A We just told them that our subject was in the bar.

Q To whom did you speak?

A I don't remember.

Q Well, you said "we told them."

A I was with Agent Becknar at the time.

Q Becknar?

A Becknar.

Q How do you spell that?

A B-e-c-k-n-e-r.

Q In the course of your activities you went over to some of these vehicles and had conversations, you and Becknar, with the occupants whom you knew to be agents?

A When we first arrived we did.

Q Sort of reporting-in to your brother officers who were now on the scene; right?

A Yes, sir.

Q Do you know if anybody was arrested in that bar that night?

A To my knowledge nobody was.

1
2 Q Do you know how many people who had been in that bar
3 and who had connections with the overall drug investigation of
4 which you were and this multitude of other officers were
5 involved were arrested that night?

6 A I can only state two for certain, Dellacava and
7 Lentini.

8 Q Where was Lentini arrest?

9 A I couldn't be certain. I don't know.

10 Q Was anybody arrested in the bar?

11 A To my knowledge, no.

12 Q Now, is it a fair statement that there were,
13 including yourself, the state officers, perhaps 15 to 30
14 agents and officers in the environs of --

15 A I think that is an inflated figure.

16 Q Could you deflate it a little to me consistent with
17 your own knowledge?

18 A I would say maybe 12 at the most.

19 Q Were you armed?

20 A Yes, sir.

21 Q And were your brother officers, according to
22 regular routine practice in your department or agency, armed?

23 A Yes, sir.

24 Q And what time was it -- you told us that Mr.
25 Dellacava was arrested about 2:05; right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, sir.

Q About what time did he come out of the bar?

A I would say approximately 1:55.

Q Would you say that Lexington Avenue was teeming with traffic at that time?

A No, it was not.

Q What night of the week was this?

A This was early Saturday morning.

Q Things were quiet on Lexington Avenue; right?

A Yes, sir.

Q Now, did you see the defendant Dellacava leave Bachelors?

A No, sir.

Q You had made an arrangement with Eaton that you weren't going to be present when he left the bar; is that correct?

A I don't understand what you mean by "present." I was about a block away.

Q Well, you were not going to be in a position of physical observation at the time he emerged. Is that correct?

A That is correct.

Q That was part of the plan. Correct?

A Yes.

Q And where was Detective Eaton supposed to be in

2 connection with this strategy?

3 A He was in a position where he could observe the
4 front of the bar and spot anybody who came and left.

5 Q Well, he was in his vehicle or --

6 A He was in his vehicle.

7 Q And your instructions were for you to be in your
8 vehicle; right?

9 A Yes, sir.

10 Q Did you have means of radio communication with
11 each other?

12 A Yes, we did.

13 Q Okay. Did he tell you whether Defendant Dellacava
14 had gone into the bar with anybody?

15 A I don't remember.

16 Q Well, you know he went in there alone. Isn't that
17 the fact?

18 A I don't know how he went in, alone or in company.
19 I don't remember.

20 Q You mean you never asked Detective Eaton whether he
21 went in with other people?

22 A I may have. I don't remember right now.

23 Q Do you have any notes in connection with this aspect
24 of this investigation?

25 A I wrote an arrest report.

Q Do you have that with you?

A No, I don't.

Q Have you ever testified in court before?

A Yes, sir.

Q Isn't it your usual practice to bring the documents reflecting the entries that you have made in connection with the testimony that is about to be elicited from you in court, those documents with you?

MR. FELD: Objection as to relevancy.

THE COURT: I will allow it.

Is that your usual practice?

THE WITNESS: For me to personally bring the notes, no, sir.

Q You don't usually bring them with you?

A The memo is part of the case file and I didn't bring the case file.

Q You made copies of that memo?

A Yes, sir.

Q Do you know if the Government has a copy?

A Yes, sir.

MR. FEITELL: Could I have a copy?

MR. FELD: We decline to produce it.

THE COURT: On what ground?

MR. FELD: On the ground that defense counsel is

not entitled to it.

THE COURT: Any other ground?

MR. FELD: I know of no statute or rule requiring the Government to produce reports prior to trial when a witness takes the stand.

THE COURT: Is there any prejudice to the Government in this production?

MR. FELD: May I confer with my colleague?

THE COURT: Yes.

(Mr. Feffer and Mr. Feld confer.)

MR. FELD: No, Your Honor.

THE COURT: Produce it.

MR. FELD: We don't have it with us at the moment.

THE COURT: Where is it, in your office?

MR. FELD: Yes.

THE COURT: Will one of you go get it?

MR. FELD: Yes, Your Honor.

Q When you arrived at the scene from your own headquarters on 55th Street -- is that it?

A 57th Street.

Q -- the first person you spoke to was Detective Eaton?

A Detective Eaton and Sergeant Restivo.

Q And how much time did you spend talking with them prior to the arrest, directly face to face?

1
2 A Five minutes.

3 Q And during this period of time was there a discussion
4 as to what the modus operandi would be in connection with the
5 execution of the warrant?

6 A We discussed it.

7 Q And what did Detective Eaton say?

8 A I don't recall his words.

9 Q What did you say?

10 A I don't recall my words. I can give you the
11 general flow of the conversation.

12 Q All right.

13 A We decided we would follow Mr. Dellacava away from
14 Bachelors Three and place him under arrest.

15 Q And according to the knowledge that you had, you
16 had a reasonable expectation, did you not, that he would go
17 back to his automobile; is that right?

18 A Yes, sir.

19 Q Which you already knew where it was parked; right?

20 A That is correct.

21 Q Which is possibly as far away as three blocks from
22 Bachelors? Right?

23 A Yes, sir.

24 Q You knew that the traffic conditions on Lexington
25 Avenue were light; correct?

1 A That is correct.

2 Q And at that hour of the morning pedestrian traffic
3 was similarly light, if not altogether non-existent; correct?
4

5 A In that area.

6 Q And did you later learn -- did you learn that when
7 Dellacava left the bar he left alone, or don't you remember?

8 A I would state that I believe he left alone.

9 Q And the route that he took was a direct route from
10 the bar to the vehicle three blocks away; isn't that so?

11 A He stopped, I believe it was twice, in a phone booth,
12 different phone booths.

13 Q But he was by himself; correct?

14 A He was by himself.

15 Q So that if you had been out on the street at that
16 time and he was not in the presence of anybody else, you and
17 your brother officers could have arrested him at that time
18 and place; isn't that so?

19 A We could have.

20 Q And he stopped how many times to make phone calls?

21 A Twice.

22 Q And was that in different telephone booths?

23 A Yes, it was.

24 Q And did you see him put coins in the coin boxes?

25 A I didn't see him. I was notified by radio that

1 this is what he was doing.

2 Q You were notified by whom?

3 A Either Detective Eaton or Sergeant Restivo.

4 Q And the notification came to you in what form?

5 A Just a short message on the radio that the subject
6 is stopping in a phone booth.

7 Q From Eaton's radio?

8 A Yes, sir.

9 Q And he told you where the phone booth was; right?

10 A Yes, sir.

11 Q So there was no actual physical impediment preventing
12 you from making the arrest in the phone booths that he utilized
13 at that time?

14 A No, sir.

15 Q And he wasn't in the company of other confederates
16 or persons known to you at that time; right?

17 A That is correct.

18 Q So there were four of you and one of Mr. Dellacava
19 throughout the evening in terms of the pre-arrest procedures;
20 correct?

21 A Yes, sir.

22 Q You were a little interested in what was in Mr.
23 Dellacava's car, weren't you?

24 A Natural curiosity.

1 Q Well, was your curiosity the same kind of curiosity
2 that any person walking down the street who didn't know Mr.
3 Dellacava would have about what was in his car?
4

5 MR. FELD: Objection.

6 THE COURT: Sustained.

7 Q Well, was yours a curiosity -- was your curiosity
8 about what was in his car based in any degree upon what you
9 had learned about Mr. Dellacava?

10 A I wasn't that familiar with him, so I probably
11 would have to say no.

12 Q Well, would you tell me and His Honor and everyone
13 else what was your curiosity about?

14 A About his car?

15 Q About what was in his car.

16 A Well, I heard that his car had been used on prior
17 occasions, so I was just curious to see his car.

18 Q Been used on prior occasions for what?

19 A While he was under surveillance.

20 Q For what?

21 A Transportation.

22 Q Used for transportation of what?

23 A Of Mr. Dellacava.

24 Q And what else?

25 A I'm not familiar with the case.

1 Q You don't know what Mr. Dellacava used to transport;
2 right?

3 A I couldn't say, no.

4 Q And you knew that Mr. Dellacava used his car for
5 transportation is what you are saying; right?

6 A Yes, sir.

7 Q So you had curiosity about what was in it; right?

8 A Yes.

9 Q And that was the whole basis for your curiosity;
10 right?

11 A That's right.

12 Q And nothing else?

13 A As I stated before, I worked on the case but not
14 particularly on Mr. Dellacava.

15 Q Well, when for the first time did you hear about
16 Mr. Dellacava?

17 A I heard his name approximately eight months prior to
18 the arrest.

19 Q Eight months?

20 A Yes, sir.

21 Q And when were you assigned into the case?

22 A March.

23 Q Well, when you were first -- when you first found
24 out about Mr. Dellacava eight months before, did you find out
25

about him in a drug context?

A Yes, sir.

Q You had information, founded or otherwise, that he had something to do with narcotics; correct?

A Yes, sir.

Q And did you know the name Capra at that time?

A Yes, sir.

Q Did you know the name Guarino?

A Yes, sir.

Q And the name Ramos?

A Yes, sir.

Q And you knew about a certain case in Toledo; right?

A Yes, sir.

Q That was as much as eight months before; correct?

A I don't think I heard about all that information eight months before.

Q As time went by in the course of the eight months you built up a bank of information; correct?

A That is correct.

Q About certain cast of characters involved in narcotics?

A Yes.

Q Now, will you tell us what your curiosity was in connection with Mr. Dellacava's car?

MR. FELD: Objection, Your Honor. The question has been asked and answered.

MR. FEITELL: Cross.

THE COURT: What did you say, Mr. Feitell?

MR. FEITELL: This is cross-examination.

THE COURT: I know it is cross. I have been sitting here all the time. Objection overruled.

MR. FEITELL: Read it back, please.

(Question read.)

A Professional curiosity.

Q In connection with drugs; right? Fairly speaking.

A As a police officer.

Q You really were curious to know if there were drugs in the car?

A If there was anything in the car.

Q Anything of a criminal nature; right?

A Anything.

Q Criminal or not criminal; right?

A That is correct.

Q You wanted to know what was in that car, period, criminal or not; right?

A That is correct.

Q Okay. And you knew after talking to Eaton that you weren't going to execute the warrant until after Dellacava

got into the car; right?

A If I could answer the question in my own way --

Q Do you understand the question?

A I do, but it wasn't Eaton who decided what would happen, and we decided to take him away from the area as far as possible so as not to alert anybody else in the area.

Q You mean to take him to 86th Street?

A Take him wherever we felt was a safe distance.

Q Where there was all of this traffic on 86th Street?

A We were beginning to lose him so we decided to take him at the next traffic light.

Q Did you ever have a discussion with Detective Eaton or your brother officers that night to the effect that you were going to let him get into his car and then stop him when he was away from the area? Did you ever have that discussion?

A I believe the discussion was we would take him as far as possible. Now, if he had walked 20 blocks we would have taken him by foot.

Q At the time just before he got into his vehicle that was as far away, perhaps, as three blocks and nobody was with him; right?

A Three blocks from Bachelors Three, possibly.

Q Okay. And Lentini, where was he arrested?

A I don't know.

Q Was anybody arrested around Bachelors Three?

A I was only concerned with Dellacava. I don't know.

Q According to the instructions that you had received at headquarters previously on the 13th, you knew that there were going to be a number of coordinated drug arrests made by a multitude of federal and state agents; isn't that so?

A Yes, sir.

Q They were all going to be executed at or about the same time; isn't that so?

A In the early morning hours of the 14th of April.

Q As soon as you could find the subject you were going to arrest him; right?

A That's what I was led to believe the instructions were.

Q Now, just before Dellacava got into his vehicle you were in communication with Detective Eaton; right?

A Yes, sir.

Q And he said to you in words or substance that Dellacava is at or about his car now and he is getting in; right?

A Yes, sir.

Q He is starting up now; right?

A Yes, sir.

- 1
- 2 Q He is pulling away from the curb; right?
- 3 A Yes, sir.
- 4 Q And he is -- In what direction was he going?
- 5 A South.
- 6 Q And you were in radio communication; right?
- 7 A Yes, sir.
- 8 Q Where was your car -- did you fall in behind
- 9 Dellacava as he pulled away?
- 10 A Yes, I did. He passed us and we took up surveillance.
- 11 Q And as Dellacava wended his way in some fashion to
- 12 the north to get up to 86th Street, did you see Eaton's car?
- 13 A He was right behind us.
- 14 Q Were you in radio communication?
- 15 A Yes, sir.
- 16 Q And what were you driving?
- 17 A I believe it was a light blue Dodge Charger.
- 18 Q And what was Eaton's car?
- 19 A I don't recall.
- 20 Q You were driving a Charger which is a Dodge; right?
- 21 A Yes, sir.
- 22 Q Was that your own car?
- 23 A No, sir.
- 24 Q That is an agency car?
- 25 A Yes, sir.

Q With what is known as a somewhat souped-up engine; is that right?

A It had a powerful engine.

Q That's why they call it a Charger, right, because you may sometimes need it to apprehend a defendant who is trying to elude you; correct?

A Yes.

Q Pretty fast car when you are trying to take somebody; correct?

A Yes.

Q You proceeded to follow the defendant and now it is your testimony that he began to take off?

A Yes, sir.

Q And you couldn't keep up with him?

A We kept up with him.

Q And you overtook him with ease; right?

A We stayed right on his rear bumper.

Q Did you have the lights on in your vehicle, or off?

A Lights were on.

Q Did you draw him to the side up on 86th Street? How?

A No, sir. He was stopped at a red light at 86th and Lexington.

Q Oh, stopped for a red light; right?

A Yes, sir.

1 dsge Samuel-cross 184
2 Q And when he was stopped at the red light you pulled
3 up. Is that correct?

4 A Our vehicle pulled in front of his.

5 Q You cut him off; right?

6 A He was stopped.

7 Q He wasn't even moving; right?

8 A That is correct.

9 Q So you had him hemmed in, front and back; correct?

10 A Yes, sir.

11 Q You got out, guns drawn; correct?

12 A Yes, sir.

13 Q Who approached the vehicle?

14 A First two men there were Detective Eaton and
15 Sergeant Restivo.

16 Q And did you follow up immediately?

17 A Yes, sir.

18 Q Did they have their guns drawn?

19 A Yes, sir.

20 Q All right. Now, tell us what was said, if anything,
21 at that time, by anybody.

22 A If I recall, the conversation was, quote, "You are
23 under arrest. Get out of the car."

24 Q Who said that?

25 A I would say either Eaton or Restivo.

1 Q Not you, though; right?

2 A No, sir.

3 Q You know you didn't say that?

4 A Yes, sir.

5 Q You knew that Eaton had been working on this case
6 for a very substantial period of time; is that correct?

7 MR. FELD: Objection, Your Honor.

8 THE COURT: On what ground?

9 MR. FELD: It is irrelevant and it is repetitive.

10 THE COURT: I will allow it.

11 The answer is yes?

12 THE WITNESS: Yes.

13 Q And he was largely responsible for developing the
14 case in connection with Dellacava, Guarino and Capra, fairly
15 speaking. Isn't that so?

16 A I don't know.

17 Q Well, did you ever learn that it was he who supplied
18 basically all of the underlying affidavits in connection with
19 the wiretapping in this case, working with Mr. Fischmann over
20 at the New York County DA's office?

21 MR. FELD: Objection.

22 THE COURT: On what ground?

23 MR. FELD: We are talking about an arrest and --

24 THE COURT: You say it is irrelevant?
25

1
2 MR. FEITELL: May I approach the bench, Judge?

3 THE COURT: Surely.

4 (At the side bar.)

5 MR. FEITELL: I'm trying to develop who was the lead
6 law enforcement officer in order to establish who it was who
7 set the pattern for the activities for the night. And my
8 theory is since it was really Eaton's case, that this officer
9 slunk back from making many material decisions that he might
10 otherwise have made had he not been in the company of an
11 older officer who was more experienced with the case. And
12 this affects the credibility of the witness with respect to
13 who was making the decisions that night. He sort of gives
14 the impression, very clearly to me gives the impression, that
15 he independently and without dissuasion of these other
16 officers, decided to carry out the arrest in the fashion that
17 it was.

18 THE COURT: I don't have that impression.

19 MR. FEITELL: You don't?

20 THE COURT: No. I have the impression that that
21 was a police decision but he didn't give the impression that
22 he made it. He seems to have said it was made by the group.
23 And as to its purpose and validity, I'll draw whatever
24 inference I draw.

25 MR. FEITELL: Then I will withdraw the question.

(In open court.)

MR. FEITELL: The arrest record or notes are in court?

MR. FEFFER: Yes.

THE CLERK: 3500, or what?

MR. FEFFER: Might as well.

(Government Exhibit 3501 marked for identification.)

THE COURT: You can take whatever you want. It doesn't signify that the Court's judgment, correct or not, rests exclusively or necessarily on Section 3500.

MR. FEITELL: While I am proceeding, may I turn this over to brother counsel?

MR. SLOTNICK: If the Court has no objection to that.

MR. FELD: I object to that procedure.

THE COURT: It doesn't have anything to do with them. You may not turn it over and they may not see it for purposes of this hearing. You are to use it exclusively for cross-examination of this witness.

MR. FEITELL: I will proceed now and at the proper time I'll ask the Court a few minutes for reading it.

THE COURT: Do you want five minutes right now, because I don't want to spend forever on this cross-examination. You want to read it?

MR. FEITELL: Yes.

THE COURT: All right. Take a few minutes.

(Recess.)

Q Yours was the vehicle that cut off the defendant?

A Yes, sir.

Q That was by pre-arrangement over the radio with Eaton?

A That was decided over the radio, yes.

Q And who was driving your car?

A Group Supervisor Becknar.

Q And as soon as you pulled in front of Defendant Dellacava's car, you hopped out of your vehicle, gun drawn, and came to the side of his vehicle; correct?

A Yes.

Q In fact, you got there first; right?

A Who did?

Q You.

A No.

Q Who got there first?

A Either Sergeant Restivo or Eaton. They were on either side of the car.

Q Where was their vehicle?

A They were behind him.

Q And apart from what you told us before, what, if anything else, was said to the defendant at that time? You

2 told him he was under arrest?

3 A Under arrest and to get out of the car.

4 Q It wasn't you who told him this; right?

5 A I didn't tell him he was under arrest.

6 Q As a matter of fact, it was Eaton who told him;
7 correct?

8 A Eaton or Restivo.

9 Q You knew this was Eaton's case and that he had
10 worked on it for quite some time; right?

11 A I didn't consider it Eaton's case, but I knew he
12 had worked on it for quite some time.

13 Q Did you consider it your case?

14 A Not mine personally.

15 Q The bulk of the work that had been done in connection
16 with the case you knew had been done by George Eaton; right?

17 MR. FELD: Objection, relevancy.

18 THE COURT: Did you know that?

19 THE WITNESS: Did I know that? No, sir.

20 Q But it was Eaton that you knew from earlier that
21 evening who had been surveilling and trailing Dellacava;
22 right?

23 THE COURT: Look, there is enough repetition. Let
24 us move on.

25 MR. FEITELL: Withdrawn.

1 Q Now, you told us when you got down to the boat
2 basin that you advised the defendant of his rights. Is that
3 correct?
4

5 A Yes, sir.

6 Q And at the time that the defendant was arrested
7 did you tell him what he was arrested for? When I say "you,"
8 you or your brother officers.

9 A I don't know at the time he was stopped if anybody
10 did, but I told him at the boat basin.

11 Q What did you tell him?

12 A I told him I was a federal narcotics agent and he
13 was under arrest for violating the federal narcotics laws.

14 Q Did you ask him who he was when you first arrested
15 him?

16 A I did not.

17 Q Was anything else said at the vehicle before he was
18 taken away?

19 A Not to Mr. Dellacava to my knowledge. It was just
20 discussion about let's move the car out of here.

21 Q This boat basin that you went to on 79th Street,
22 you have used that before in connection with investigations;
23 correct?

24 A I have never been there before in my life.

25 Q Whose idea was it to go there?

1 A I believe it was one of the police officers, New
2 York City Police officers.

3 Q Was it Eaton's suggestion?

4 A I don't remember.

5 Q It was Eaton or Restivo?

6 A One of those two.

7 Q And did you know where the 79th Street boat basin
8 was at that time in your life?

9 A Yes, I did.

10 Q Had you ever been there before?

11 A No, sir.

12 Q And what did they do with Dellacava when they
13 removed him from his vehicle?

14 A He stood alongside of it.

15 Q Well, wasn't he searched?

16 A His person was searched, yes, sir.

17 Q Was anything taken from his person?

18 A I believe he had \$1200 in cash, U.S. currency. It
19 was taken from him, counted and put back on him.

20 Q So basically the search that was conducted at that
21 time was a search of his person; right?

22 A At that time, you mean at the boat basin?

23 Q No, no, at the time of the arrest on 86th Street.

24 A At the time of arrest we searched him for weapons,
25

handcuffed him and we left the area.

Q You searched his person, is what you are saying, at the vehicle?

A Searched his person.

Q You searched his person for weapons; right?

A Yes, sir.

Q You didn't perform a search of the vehicle right out there on 86th Street, did you?

A No, sir.

Q Who got into the car to drive that Olds away?

A I did.

Q And who led the way to the boat basin?

A I was the last car in the caravan. I don't know which car was in front of me. I don't remember.

Q Well, do you know what it said in the search warrant with respect to what you were supposed to do when you arrested the defendant? Do you remember what it said?

A In the arrest warrant?

Q Yes.

A Place him under arrest.

Q Did it say that you should deliver up the defendant Dellacava before any United States judicial officer?

A I believe all arrest warrants state that.

Q What do they state, if you remember?

1
2 A I couldn't recite it verbatim. I know they state
3 place him under arrest and bring him before a magistrate for
4 arraignment.

5 Q And when you went over to 79th Street did you expect
6 to see a magistrate there?

7 A I didn't expect to see a magistrate anywhere at that
8 hour in the morning.

9 Q Well, this was a large coordinated drug arrest which
10 was planned the day before; right?

11 A It had been planned sometime before.

12 Q And it involved some 85 or 90 defendants who were
13 going to be locked up; right?

14 A Yes, sir.

15 Q And they had these packets made up regarding each
16 subject defendant; right?

17 A That is correct.

18 Q Do you know if anybody made any arrangements to have
19 a magistrate ready and available?

20 A I wouldn't know.

21 Q In connection with the arrests?

22 A I wouldn't know.

23 Q Now, you had this meeting on a Friday where they
24 handed out these nice packets; right?

25 A Yes, sir.

1 Q Elevent o'clock at night; right?

2 A That's when it started.

3 Q And to your knowledge does this or is this court-
4 house open with judges sitting on Saturday morning in the
5 regular course of business?

6 A I don't know.

7 Q Well --

8 A I have never brought anybody here so I wouldn't know.

9 Q Did you receive your instructions in some kind of an
10 auditorium on 57th Street?

11 A Yes, sir.

12 Q How many agents were in the room?

13 A Approximately 200.

14 Q Was there a man or some federal officer or United
15 States Government employee who got up and told all those
16 assembled and present, the time has come that we are going to
17 lock up a lot of people in connection with drugs, or words to
18 that effect?

19 A Yes, sir.

20 Q Did he make any mention of the fact that arrange-
21 ments had been made to have judicial officers of the United
22 States present to take arraignments?

23 A I didn't hear him if he did.

24 Q Prior to your coming to the 57th Street address
25

1 that night, had you been working on the case earlier in the
2 week?
3

4 A On and off.

5 Q In connection with your activities that week, did you
6 come up with any new or interesting or valuable evidence con-
7 cerning the defendant Dellacava's criminal activities?

8 A No, sir.

9 Q So substantially speaking, everything they knew
10 about Dellacava they knew about well before that week. Isn't
11 that so?

12 A I could just guess at the answer, because this
13 wasn't my primary responsibility.

14 Q Your guess would be yes; is that what you are saying?

15 MR. FELD: Objection, Your Honor. We are not here
16 for guesswork.

17 THE COURT: Yes. Sustained.

18 Q Now, when you got down to the boat basin, what kind
19 of premises was the defendant taken into?

20 A It was an underground parking garage.

21 Q Do you know who operated and controlled that garage?

22 A I saw a lot of, I think, Department of Sanitation
23 trucks down there.

24 Q Did you see police vehicles there?

25 A No, sir.

2 Q Where was the defendant taken in that premises?

3 A He stood right outside his car.

4 Q Was the car taken off the street into this garage-
5 type area?

6 A Yes, it was.

7 Q Is this below the level of the ground, below street
8 level?

9 A It is below the West Side Highway.

10 Q Did you have a discussion with the defendant at
11 that time?

12 A If we did it was just small talk.

13 Q What did you say to him and what did he say to you,
14 if anything?

15 A I told you before, I advised him who I was, what was
16 going on, and I advised him of his rights.

17 Q Did you read from a card or did you remember what
18 his rights were?

19 A I read from a card.

20 Q Do you have this card with you?

21 A Yes.

22 Q Could I see it, please?

23 A Yes (handing).

24 Q Thank you. Do you remember reading Item No. 3 on
25 your card?

A I read the entire card.

MR. FELD: Your Honor, may we have this card identified for the record so it is clear in the record?

Q Is this the card that you use to give all warnings to a subject prior to oral interrogation?

A Yes, sir.

MR. FEITELL: May we have it marked for identification?

(Defendant's Exhibit A marked for identification.)

Q Did you tell him in words or substance from the face of this card that he had a right to talk to a lawyer before you started asking him questions?

A Yes, sir.

Q Did the defendant ask for permission to get in touch with his lawyer?

A No, sir, not at that time.

Q When for the first time did the defendant ask to speak to a lawyer?

A I don't remember. I dropped him off later that morning. That was the last I saw of him until arraignment.

I take it back. I saw him during the weekend at our office but I never spoke to him again in an official capacity.

Q Who did continue speaking to him, if you know?

A I don't know. They had --

1
2 Q How late did you stay there that night with
3 Dellacava?

4 A I believe we left the boat basin at approximately
5 3:20.

6 Q Who did you leave with? Did you leave with
7 Dellacava to go somewhere or did you leave by yourself?

8 A We all left together.

9 Q You took him somewhere for processing?

10 A Yes, sir.

11 MR. FELD: I object on the grounds of relevancy
12 to anything that happened subsequent to this incident, since
13 we are only concerned here with the search of the vehicle.

14 THE COURT: What about that, Mr. Feitell?

15 MR. FEITELL: I think there are broader impli-
16 cations than this, Judge, which are being unearthed during
17 the course of this examination.

18 THE COURT: Tell me what they are.

19 MR. FEITELL: In my mind at least, for whatever it
20 is worth, I think there is a very serious problem now in terms
21 of the procedures that were developed in connection with mass
22 arrests where I would hope to prove as I am proceeding now,
23 that the defendant was kept virtually incommunicado for a
24 substantial number of hours, never brought to a magistrate.

25 THE COURT: Wait a second. Am I concerned on this

motion with anything other than the search of the vehicle?

MR. FEITELL: Not according to my motion papers.

THE COURT: Well, objection sustained.

MR. FEITELL: Although yesterday in speaking with Mr. Feffer, at least regarding remarks he made to Your Honor, he said there might be some statements that are going to be offered against the defendant Dellacava.

MR. FEFFER: I told counsel that I had been back to him today. There will be no statements offered of the defendant Dellacava, post-arrest statements.

MR. FEITELL: If I may ask to clear the air now, that was --

THE COURT: No, no. Let's proceed with the motion. Don't clear the air. Let's get finished with one thing at a time.

Q Then did there come a time when you were at this boat basin that a search was performed on the defendant's car?

A Yes, sir.

Q Did you ask him for permission to carry out the search?

A No, sir.

Q Where did you get the keys to the car?

A From the ignition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dsgrs

Samuel-cross

200

Q And on -- did you get keys to the trunk?

A They were all attached.

Q They were not kept at any separate place; right?

A I don't think so.

Q Incidentally, apart from what you told us you removed from the person of the defendant at the side of the automobile when you stopped him, that is, a quantity of money, did you take any personal belongings of his in the nature of papers or books?

A We took nothing at the site of the arrest on 86th Street. We took his money at the boat basin, counted it, and gave it back to him. Then when we processed him in our office, everything we removed, personal papers, pictures, keys, everything.

Q Incidentally, could this report of investigation marked 3501 for identification, this was signed by you; correct?

A Yes, sir.

Q And you are the person who composed it; right?

A Yes, sir.

Q You sat down from your own recollection and notes and you prepared this document; right?

A From my recollection and talking with the other officers.

Q You didn't have any notes?

1
2 A No notes.

3 Q Did you type it up?

4 A Secretary typed it.

5 Q And you read it before you signed it; right?

6 A Yes, sir.

7 Q So far as you know it is truthful and correct in
8 its entirety; is that correct?

9 A I would say yes.

10 Q Now, you never asked the defendant for permission
11 to open the vehicle, to search the trunk. Is that correct?

12 A I did not.

13 Q Now, take us slowly through the search of the
14 vehicle by telling us who was present at the time of the
15 search in the garage premises at the Department of Sanitation
16 on 79th Street.

17 A Defendant Dellacava, myself, Group Supervisor
18 Becknar, Sergeant Restivo, and Detective Eaton. When the
19 car was being searched I believe I was --

20 Q Just a moment, please. Did you mention a group
21 supervisor?

22 A Becknar.

23 Q Becknar. And these are all the same people who
24 were involved in the arrest?

25 A In the arrest, yes, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What happened at that point?

A The search was proceeding and I was with Mr. Dellacava.

Q Where was he standing at the time?

A He was standing outside the car in the general area.

Q Did you tell him you were going to perform a search?

A I believe he was told.

Q And up to this point did he ask for a lawyer?

A I don't remember his asking for one.

Q Was the body of the vehicle searched?

A Yes.

Q Who performed that aspect?

A I would have to say it was Becknar, Restivo, and Eaton, I was with Dellacava.

Q Standing right by?

A Yes, sir.

Q And you saw and observed whatever had occurred?

A Yes.

Q What did you see removed from the body of the vehicle?

A Baseball bat was removed from the back seat and put back. When Sergeant Restivo found the brown gym bag he called me over.

Q Was that found in the body of the car?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No, sir.

Q Let's take the body of the car first.

A The only thing I recall was the baseball bat.

Q Was the glove compartment searched?

A I believe it was.

Q Was the hood area of the car searched?

A I believe it was opened and looked around and closed.

Q Nothing was found in there; right?

A No, sir.

Q And then, somebody undertook to open up the trunk;
right?

A That is correct.

Q And who was that?

A I believe it was Sergeant Restivo.

Q You knew he was going to do that, did you not?

A Well, I saw him working toward the trunk with the
keys, so I assumed he was.

Q You approved his searching the trunk; is that
correct?

A Yes, sir.

Q And tell us what, if anything, you saw removed from
the trunk.

A Sergeant Restivo removed a brown gym bag, opened
it in my presence and we observed bundles of money inside the

1
2 bag. Approximately the same time --

3 Q Did you see where the bag was located?

4 A I think it was in the left side of the trunk. There
5 was spare tires, clothes, miscellaneous items.

6 Q Prior to the defendant's leaving the premises at
7 Bachelors, you didn't see him carry anything, did you?

8 A No, sir.

9 Q To your knowledge he wasn't carrying anything in his
10 hand, was he, or wasn't he?

11 A I don't know. I didn't see him.

12 Q In your radio communication did you ever hear from
13 anybody that he had something in his hand as he traversed the
14 sidewalks?

15 A On his way back to the car I don't think he had
16 anything.

17 Q Did you ever see him go to the trunk prior to getting
18 into the vehicle?

19 A No, sir.

20 Q Over the radio, did you hear that the defendant had
21 opened up the trunk to the car?

22 A No, sir.

23 Q You didn't hear that, either; right?

24 A No, sir.

25 Q But you were getting a step-by-step verbal report

2 of physical observations from Eaton?

3 A Whoever was on the radio.

4 Q Now, apart from the bag and the money, what else
5 was in the trunk?

6 A A Sears and Roebuck plastic bag sealer, which I
7 took out. Then there were just other miscellaneous items of
8 clothing. I think he had a bar sign, one of these Ballantine
9 beer signs.

10 Q And that's all that was removed; correct?

11 A The only things removed were the gym bag and the
12 plastic bag sealer.

13 Q The sealer?

14 A The sealer.

15 Q Were there any bags that went with the sealer?

16 A No.

17 MR. FEITELL: I would like to ask for the production
18 of what was taken from the vehicle, within reason, particu-
19 larly the sealer and the bag.

20 THE COURT: What is the purpose?

21 MR. FEITELL: So that I could, for the first time
22 in connection with this case, make an observation of the
23 property that was seized and see if there comes to my mind
24 any reasonable and probable question.

25 THE COURT: Reasonable and probable question about

1 dags
2 what? You are moving to suppress whatever it was. If it was
3 an unreasonable search, if it is a baby doll, you will get it
4 suppressed. If it was a reasonable search, you won't get it
5 suppressed and you will see it eventually. Please proceed.

6 Q And that is the totality of what was removed,
7 produced in connection with the search; correct?

8 A Yes.

9 Q And the trunk was closed; right?

10 A Yes.

11 Q And you retained the keys or the officers retained
12 the keys?

13 A Yes, sir.

14 Q And the defendant was under arrest?

15 A Yes, sir.

16 Q And the defendant was in handcuffs?

17 A Yes, sir.

18 Q Did you get on the phone to tell Mrs. Dellacava --
19 Incidentally, dou you know Mrs. Dellacava's name?

20 A I believe it is in my report. I don't know her
21 name.

22 Q Would it refresh your recollection if I told you
23 that her name was Margaret Dellacava, maiden name Falsetti?

24 A Yes, sir.

25 Q At the time you drew this up, which was on

1
2 April 18, you knew where she lived; right?

3 A I had the information before me.

4 Q Did you call her up to tell her you had her husband's
5 car?

6 A No, sir.

7 Q And that you were making an inventory search but
8 that she could come up to pick up the car as soon as you
9 finished?

10 A I didn't contact her.

11 Q Incidentally, the defendant got his car back after
12 he was released from jail; isn't that so?

13 A He received his car.

14 Q So the car was never -- withdrawn.

15 Now, you told us on your direct examination that
16 you are aware of some procedure in connection with the
17 impounding of vehicles which requires you to make what you
18 call an inventory search?

19 A Of valuable property.

20 Q Was making an inventory search one of the subjects
21 that was discussed at the mass meeting on 57th Street?

22 A No, sir.

23 Q Now, in preparing your report, did you state any-
24 where in your report that you made an inventory search?

25 A If I could read it, I'll tell you. I don't recall.

1
2 Q Do you know the difference between --

3 MR. FELD: Would counsel like to show the witness
4 his statement?

5 MR. FEITELL: I'm going to proceed in my own fashion.
6 I know how to try my case. Thank you.

7 Q Now, you have heard or you made other searches in
8 your lifetime, professional lifetime as an officer, have you
9 not?

10 A Yes, sir.

11 Q How long have you been in this agency that you are
12 now assigned to as a special agent?

13 A Two years.

14 Q And you received training in connection with your
15 job, did you not?

16 A Yes, sir.

17 Q And you received training regarding the law of
18 search and seizure; right?

19 A Yes, sir.

20 Q And in the course of your training did you receive
21 any instructions regarding inventory searches?

22 A No, sir.

23 Q When for the first time did you hear about the
24 procedure of an inventory search?

25 A My first month on the job.

1 Q And in the course of your training did you ever hear
2
3 of the expression, "a search incidental to arrest"?

4 A Yes, sir.

5 Q You know what that is, don't you?

6 A Yes.

7 Q Will you tell me in your own mind what a search
8 incidental with an arrest is?

9 THE COURT: I don't care. Next question.

10 Q In your report here did you say that incidental to
11 the arrest of Stephen Dellacava a search was conducted of
12 his vehicle; did you say that?

13 A Could I see it?

14 Q Yes (handing).

15 A Yes, sir.

16 Q Now that you have the piece of paper, will you look
17 and see if you said anywhere that you made an inventory search?

18 THE COURT: Let's shorten this because we are going
19 to stop in about five minutes for lunch.

20 You represent it doesn't say anything about that
21 in there? The Government will look at it during lunch and if
22 there is a difference of opinion, tell me about it.

23 Next question, please.

24 Q Did you make any attempt to sequester the car and
25 have it kept in a safe place under lock and key pending

1 application by yourself or other related officers to a
2 judicial officer for a search warrant?
3

4 A The car was kept locked up in a secure place.

5 Q Where was it kept?

6 A In our garage.

7 Q On 57th Street; right?

8 A It is close by.

9 Q Where is the premises in which it was kept?

10 MR. FELD: Objection, Your Honor, as to the Bureau
11 of Narcotics' garage, the location.

12 THE COURT: Why do we need to know that?

13 Q A secured premises?

14 A Yes.

15 Q Under the control of special agents of the United
16 States Government?

17 A Yes, sir.

18 Q And that's where the car was taken from, the 79th
19 Street garage; right?

20 A Yes.

21 Q And you arrested him at 2:05?

22 A Yes, sir.

23 Q What time was the search performed in the garage?

24 A 2:30.

25 Q And 2:30, what part of the garage did you perform

1 dsgs

Samuel-cross

211

2 the search in?

3 A I could take you there. I don't know how to
4 describe it. You go down the ramp and it was the area you
5 first come to.

6 Q And the place was rather deserted at that hour,
7 was it not?

8 A Yes. Two or three cars went by, that's all.

9 Q Having nothing to do with you; right?

10 A That is correct.

11 Q And nobody deigned to come over to interfere with
12 your procedures, did they?

13 A No, sir, nobody did.

14 Q In fact, nobody even came over from the premises
15 who were in charge there to ask what you were doing there;
16 right?

17 A I don't even know if anybody was there in charge.

18 Q You saw two or three cars go by there?

19 A Yes, on the way to the boat basin.

20 Q Incidentally, do you have to open a lock to go
21 inside?

22 A Now, sir.

23 Q Was it lit?

24 A Yes.

25 Q And there are vehicles, city vehicles, located there?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, sir.

Q What type of vehicles?

A Trucks, maintenance trucks.

Q And passenger vehicles that are used in connection with the work activities of our Department of Sanitation?

A Also private vehicles there.

Q A lot of valuable property; right?

A I assume so.

Q Now, do you know who was in charge of the premises at that time when you got there?

A No, sir.

Q Did you gentlemen stop to check in with anybody from the Bureau of Highways or Department of Sanitation?

A There was nobody there to check with.

Q Did you look for anybody?

A No, sir.

Q You just drove in and went to a spot; right?

A Right.

Q Where you felt you could do your business; right?

A That's right.

Q And nobody annoyed you; correct?

A That is correct.

Q And then you did your business and left; right?

A Yes.

Q And then the vehicle was transported to this not described but secure place?

A That is correct.

Q Under the jurisdiction of your department; correct?

A That is correct.

Q And you made no effort during all of these procedures to get yourselves a warrant to make a search; right?

A I didn't.

Q Do you know if anybody else did?

A No, sir.

Q And how long was the vehicle kept there?

A Kept where?

Q In this garage.

A Secured in our garage?

Q Yes.

A Must have been two weeks.

Q Two weeks?

A That's right.

Q And how long did the defendant remain in jail until he claimed the vehicle?

MR. FELD: Objection, Your Honor. It is irrelevant.

THE COURT: Why is that relevant?

MR. FEITELL: The Government had ample opportunity because of the time that had elapsed to have gotten a search

1 dsge

Samsul-cross

214

2 warrant as events in history prove. Now, the development of
3 after events, while they are hindsight, do indicate to a degree
4 the possibilities that were available at the moment and that
5 should have been recognized by rational law enforcement
6 officers: Namely, that nobody would be coming to take this
7 vehicle away in a terribly quick fashion.

8 THE COURT: Since we are going to be together for
9 a while, especially when the jury is here, don't lard the
10 thing. If it is locked in the garage and it is there for a
11 day, a week, or a month, it doesn't make much difference to me.
12 Let's stop for lunch and come back at 2:15.

13 (Luncheon recess.)
14
15
16
17
18
19
20
21
22
23
24
25

1 dsge

215

2 AFTERNOON SESSION (2:15 p.m.)

3 MR. FEFFER: We have here the suitcase in question.
4 We would like to have it marked for identification.

5 (Government Exhibit 1 marked for identification.)

6 THE COURT: These numbers relate to these pretrial
7 hearings. If and when we go to trial we will be using
8 different numbers.

9 MR. FEFFER: Yes, Your Honor.

10 THE COURT: Tell me, is there any contention by the
11 Government that this object that was just marked for identi-
12 fication deviates in any substantial respect from the
13 description given by Mr. Dellacava?

14 MR. FEFFER: No, Your Honor.

15 THE COURT: There is not?

16 MR. FEFFER: No, Your Honor.

17 THE COURT: All right.

18 MR. FEITELL: May I proceed, Your Honor?

19 THE COURT: Yes.

20 D A V I D S A M U E L , resumed.

21 CROSS-EXAMINATION (Continued)

22 BY MR. FEITELL:

23 Q Looking at this exhibit for identification, is
24 that your signature?

25 A Yes.

1 Q Is that a copy of your report on this arrest?

2 A Yes.

3 MR. FEITELL: I will offer this in evidence.

4 (Government Exhibit 3501 received in evidence.)

5 Q For the sake of pinpointing this to the Court,
6 your words in paragraph 3 that you used were these: "Inci-
7 dental to the arrest of Stephen Dellacava, a search was
8 conducted of his vehicle," et cetera. Is that the terminology
9 you employed in paragraph 3?
10

11 A Yes, sir.

12 Q Thank you.

13 Q Incidentally, during the lunch hour, did you discuss
14 this case with anyone?

15 A Yes, sir.

16 Q With whom did you discuss it?

17 A With Mr. Feffer and Mr. Feld.

18 Q Did you discuss your testimony?

19 A Not at length.

20 Q You talked about the case; right?

21 A They just said you're doing fine.

22 Q Did any subject matter that you discussed this
23 morning come up? Remembering the questions I put to you and
24 the answers that you gave, did you go over those at all, in
25 any way at all, over the lunch hour?

1
2 A I stated to them that you seemed to be repeating
3 yourself and asking the questions over and over.

4 Q That's all you said?

5 A That was my comment.

6 Q Now, this warrant -- let me have this marked for
7 identification as Defendant's Exhibit B.

8 (Defendant's Exhibit B marked for identification.)

9 Q Please look at B for identification and tell us
10 whether or not this is a copy of the warrant that was given
11 to you on the 13th of April for execution.

12 A Yes, sir.

13 Q Is that the actual copy you had or did you have
14 another copy?

15 A I have a Xerox copy of this.

16 Q I see. And when you got it did you read it?

17 A Not from top to bottom.

18 Q You had seen these before, hadn't you, arrest
19 warrants?

20 A Yes.

21 Q And you are familiar with the language in the
22 arrest warrants?

23 A Yes.

24 Q You are familiar with the language contained in
25 these warrants to the effect, "You are hereby commanded to

1 arrest Stephen Dellacava and bring him forthwith before the
2 United States District Court?"

3
4 A Yes, sir.

5 Q And you didn't bring him forthwith before the
6 United States District, did you?

7 THE COURT: Let's move on, Mr. Feitell.

8 Q In fact, did you ever surrender him to the United
9 States District Court?

10 A I personally did not.

11 Q You turned over his custody and body to another
12 person?

13 A Yes, sir.

14 Q So you yourself never carried out the strictures of
15 this warrant. Is that correct?

16 A As far as the arraignment?

17 Q In any connection.

18 A I merely arrested him.

19 MR. FEITELL: I offer this in evidence, Your Honor.

20 MR. FELD: No objection.

21 (Defendant's Exhibit B received in evidence.)

22 Q Did you execute a return on the warrant?

23 A No, sir.

24 Q Somebody else did?

25 A I would say yes, but I don't know who.

1
2 Q Do you know whether return on the warrant was made?

3 A I would have to assume so, but I don't know for sure.

4 Q You mean it was your arrest but you let somebody
5 else make the return on it. Is that your testimony?

6 A There were four men present. I was the junior man
7 present so I wasn't claiming credit for the arrest.

8 Q You were the junior man?

9 A Yes, sir.

10 Q And you let the credit go to somebody else; right?

11 MR. FELD: Objection, Your Honor.

12 MR. FEITELL: Withdrawn.

13 THE COURT: Look, it shouldn't have been asked.
14 Let's move on to meaningful questions and accelerate this.

15 Q Do you know when for the first time the defendant
16 was produced in court?

17 A I believe it was on Monday, the following Monday.

18 Q And do you know where the defendant was taken during
19 the early morning hours for custodial purposes after you left
20 him at 57th Street?

21 MR. FELD: Objection, Your Honor.

22 THE COURT: Why is that relevant?

23 MR. FEITELL: Because I think the issue has surfaced
24 in these proceedings, Judge, notwithstanding what arguably
25 somebody might say is the facial insufficiency of these motion

1 papers. I want to make an issue out of the Government pro-
2 cedures in connection with a mass arrest of this sort. And
3 I want to trace how the defendant was treated over that
4 weekend, where he was taken.
5

6 THE COURT: Objection sustained.

7 MR. FEITELL: Would Your Honor entertain an appli-
8 cation now for me to broaden out my notice of motion in view --

9 THE COURT: Certainly not. The circumstances of
10 that arrest were well known to you many months ago. This
11 motion is late enough as it is and you are stuck with it.
12 Let's proceed.

13 MR. FEITELL: Your Honor, I have to contradict
14 Your Honor's assertion. You are assuming this is a fact. I
15 didn't know the facts of this arrest many months ago.

16 THE COURT: I don't care what you personally knew.
17 Counsel for your client knew. If a man switches lawyers I am
18 going to hold him to what his prior competent lawyer knew
19 as well as to what his present lawyer knows. Now let's
20 proceed.

21 Q You told us that some sweepings were made of the
22 vehicle; is that correct?

23 A No.

24 Q What did you tell us about that?

25 A I told you we found the brown gym bag, we seized

money inside and we turned the bag over to our laboratory and sweepings were conducted of the bag, not the car.

Q Sweepings of the bag?

A Yes.

Q Do you know what the result of the examination of the detritus in the bag was?

A Traces of heroin were found.

MR. FEITELL: We haven't received notification from the Government that they intend to offer any proof with regard to tracing, and I'm adverting to a letter received from Mr. Feld furnished to us about the examination of the drugs seized in Toledo. And that offering I construed to be -- bear with me, for a moment.

(Defense counsel confer.)

MR. FEITELL: We have never received any lab report in connection with these tracings and we have no information in the past to the effect that there was going to be an offer of this sort.

THE COURT: An offer of which sort?

MR. FEITELL: Of the tracings removed.

THE COURT: Are you going to offer them?

MR. FELD: Yes, Your Honor. We will give him a copy of the laboratory report respecting those tracings.

MR. FEITELL: Do you have it with you?

1 MR. FELD: We don't have it present in the courtroom,
2
3 Your Honor, but we will get it.

4 THE COURT: Give it to him by tomorrow.

5 MR. FELD: Very good, Your Honor.

6 MR. FEITELL: I have no further questions, Your
7 Honor.

8 REDIRECT EXAMINATION

9 BY MR. FELD:

10 Q Mr. Samuel, during the course of your cross-
11 examination you referred to a meeting at 57th Street on the
12 evening of April 13 in which a large number of agents were
13 present and at that time instructions were given to you in
14 connection with the matter of the forthcoming arrests; is that
15 right?

16 A Yes, sir.

17 Q Who were the persons giving those instructions?

18 A Mr. Anthony Pohl, P-o-h-l, and Captain Leonard of
19 the New York City Police Department.

20 Q Could you tell us the title of Mr. Pohl at the time?

21 A I believe his title was Deputy Associate Regional
22 Director of the Bureau of Narcotics and Dangerous Drugs.

23 Q Were those two gentlemen in charge of the program
24 that was created with respect to these arrests?

25 A Yes, sir.

Q Was George Eaton in charge?

A In no way.

Q Now, you were with your supervisor on the night of the arrest. Is that correct?

A I was with a supervisor.

Q A supervisor?

A Yes.

Q And if any decisions had to be made, who would have made them?

MR. FEITELL: Objection, Your Honor.

THE COURT: On what ground?

MR. FEITELL: I'd like to know what happened, not if something was going to happen who would do something, which is entirely speculative. I was limited to what happened, who made the decisions.

THE COURT: I don't remember about how you were limited. Until now I was with you all the way, but I sustain your objection in spite of the last part of your argument.

Q Do you know why it was decided not to arrest the defendant in Bachelors Three?

MR. FEITELL: Objection.

THE COURT: Overruled.

A Basically there were two reasons: The first one

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dsgs

was danger to any civilians if there was any resistance or violence. The second one we didn't want to arrest the defendants in each other's presence, so as to in turn alert others who might be picked up.

Q Did you have information that another defendant for whom a warrant was issued was inside Bachelors Three?

A I knew Thomas Lentini to be in the area.

Q Now, could you tell us again what the purpose of the search was of Mr. Dellacava's car?

MR. FEITELL: I will object to this, Your Honor. That has been covered already. I don't know that the officer should have a second crack at this.

THE COURT: Sustained.

MR. FELD: May I just consult with Mr. Feffer?

THE COURT: Yes.

(Mr. Feffer and Mr. Feld confer.)

MR. FELD: No further questions, Your Honor.

MR. FEITELL: Just a few questions.

RECROSS-EXAMINATION

BY MR. FEITELL:

Q You told us before when you learned the defendant left the bar he left in his own company. Is that right?

A He was alone.

Q And his movements were traced to telephone booths

two or three blocks away from the premises --

THE COURT: You just asked he shouldn't repeat.
Why don't you follow that?

Q Could you tell the Court what the precise facts were before you at the time when the defendant was in the telephone booth three blocks away from Bachelors East which indicated to you a likelihood or a probability of violence in connection with his arrest in view of the fact that you had so many armed agents in the area?

MR. FELD: Objection, Your Honor.

THE COURT: Sustained.

Q Are you telling us in your redirect testimony that it was your objective and intention to have the defendant picked up and taken away from the scene so that others would not know that he had been arrested?

A That is correct.

Q And it was part of your objective that he should not give communication to anybody that he had been arrested?

A Any other defendants.

Q What about a lawyer?

A That was not my purpose.

Q Did you know that he knew a lawyer by the name of Mr. Santangelo?

MR. FELD: Objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I will allow it.

Answer yes or no.

A Yes.

Q Do you know that Mr. Santangelo had been heard on a telephone tap with Mr. Dellacava during the investigatory phases of this case?

MR. FELD: Objection.

THE COURT: Why is that relevant?

MR. FEITELL: To establish knowledge and who the defendant might be trying to contact.

THE COURT: Sustained.

A I knew that --

THE COURT: No, no. I have sustained the objection.

THE WITNESS: Excuse me.

Q And isn't it a fact that the defendant was kept incommunicado in Nassau County for a considerable period of time?

MR. FELD: Objection.

THE COURT: Do you know how long he was kept incommunicado?

THE WITNESS: I know he was a prisoner. I don't know about incommunicado as far as limiting telephone calls. I have no idea of that. I lost track of him after I turned him over in our office.

Q Do you know when for the first time he communicated with a lawyer?

A I have no idea.

MR. FELD: Objection, Your Honor. This has nothing to do with the scope --

THE COURT: I will allow it.

A I have no idea.

MR. FEITELL: No other questions.

REDIRECT EXAMINATION

BY MR. FELD:

Q How many defendants were scheduled to be arrested that day?

A I believe 86 were indicted. The total number arrested I believe was 69.

Q But arrest warrants had been issued for 86?

A That is correct.

MR. FELD: No further questions.

THE COURT: Anything else?

MR. FEITELL: Nothing, Judge.

THE COURT: All right, Mr. Samuel, thank you.

(Witness excused.)

MR. FELD: Your Honor, from my conversations with Mr. Feitell, I understand that he is willing to stipulate to the fact that an arrest warrant was issued out of this court

1 dags

2 by the clerk of the court for Mr. Dellacava on April 13, and
3 we would ask that that stipulation be part of the record.

4 MR. FEITELL: I will be willing to consent to that
5 and so stipulate if counsel will also say that was the only
6 search warrant that was issued out --

7 THE COURT: The only arrest warrant.

8 MR. FEITELL: To preclude earlier arrest warrants
9 that were in somebody else's pocket.

10 MR. FELD: Yes.

11 MR. FEITELL: Then I would be willing to stipulate.

12 THE COURT: All right.

13 MR. FELD: We have no further witnesses, Your Honor.

14 MR. FEITELL: We would like to call Detective Eaton.

15 THE COURT: Where is he?

16 MR. FEFFER: He is upstairs, Your Honor. I can
17 get him. I wasn't warned of the fact --

18 THE COURT: I don't really much care for this. Are
19 you just telling him now that you wanted Detective Eaton?

20 MR. FEITELL: You told me you had two witnesses
21 this morning.

22 MR. FEFFER: I anticipated the likelihood that he
23 might be called and I told him to stay in my office.

24 THE COURT: From now on, give a little notice so
25 we don't have to sit around while people try to make the

1 dsgrs

2 elevators in this building, which don't work. There is a point
3 of coyness which is excessive from this Court's point of view,
4 and you have passed it. Don't do this anymore. Tell him
5 before the time you want a witness and not at the time. I'm
6 going to make him give you suitable notice, 3500 material,
7 give it to you timely so you won't have to keep us waiting to
8 read things and matters of that kind.

9 MR. FEITELL: Just simply this: It seems to me
10 what Your Honor has said in this case previously is particu-
11 larly applicable to all the attorneys at this time, and that
12 is that attorneys of some experience with some foresight who
13 have been around courts for a reasonable period of time should
14 be able to project what is coming up next. And for any
15 attorney, my adversary at this point, to state they could not
16 reasonably anticipate that I wasn't going to call Detective
17 Eaton, I just can't go along with that, Judge. That was in
18 the cards like a lot of other things.

19 THE COURT: You are going to have trouble getting
20 the last word in this courtroom, Mr. Feitell, on account of
21 where we sit. I don't care what he could anticipate. The
22 fact is right now a lot of us are sitting around waiting
23 while somebody gets Detective Eaton, where if you gave notice
24 before lunch he would be in the witness room or I'd want the
25 Government to explain why. Don't play games with me. If you

1 dsqs

2 want to play games with them outside of my presence and where
3 I won't be affected, that's between you two. But I am giving
4 you an instruction now to give due and explicit notice of
5 things that you plan so that everybody will know and be guided
6 accordingly, and this Court won't have to sit and wait around
7 while people run and and down elevators. That's all I told you.
8 I don't think you needed to have a rejoinder. Please follow
9 that instruction.

10 MR. SLOTNICK: While we are waiting for Detective
11 Eaton, may we use the time constructively? I was under the
12 impression since I had been served with one laboratory report
13 mentioning the alleged contents of heroin in Toledo, that was
14 to be used at the trial. I have now found out that there are
15 other tracings or other evidence that is to be used that have
16 undergone laboratory analysis. I also believe the Court
17 made an order, and I'm not sure, that lab reports were to be
18 turned over. At this stage of the game I am not going to be
19 picayune and petty, but I would like to know when the Govern-
20 ment intends to turn over lab reports to us and also whatever
21 other examinations they have done with regard to handwriting
22 analysis, et cetera. Your Honor has indicated that this
23 trial is scheduled for October 15. I ask for some indication
24 from the Government what reports they have, what they are
25 going to turn over, and when they plan to do that.

1
2 MR. FELD: Your Honor, we have given laboratory
3 reports to defense counsel. We will furnish a copy of the
4 report in respect to heroin tracing, copy of the same report
5 we are going to give it to Mr. Feitell, we will give it to
6 Mr. Slotnick as well.

7 THE COURT: We ask you what reports do you have?
8 Do you have any others besides this tracing report in the
9 gym bag?

10 MR. FELD: We furnished defense counsel with
11 laboratory reports with respect to heroin and cocaine in
12 connection with Toledo, in connection with Detroit, and this
13 is the only other narcotic evidence that the Government
14 proposes to offer. So we will furnish them with lab reports
15 of this.

16 THE COURT: Does that answer your question, Mr.
17 Slotnick?

18 MR. SLOTNICK: In full, except for one other report.
19 There have been certain handwriting samples that have been
20 taken which I have been waiting for for a length of time. I
21 was wondering when the Government would submit that. When do
22 they indicate that will be done?

23 MR. FELD: We will give him a copy of the original
24 tomorrow.

25 THE COURT: Does that take care of your request,

1 dsgrs

2 Mr. Slotnick?

3 MR. SLOTNICK: As to when the Government's report
4 will be ready. I am wondering when it will be ready.

5 MR. FELD: When our analyst completes his work.

6 THE COURT: When do you expect that to be?

7 MR. FELD: As soon as Mr. Morris gives us the
8 samples.

9 THE COURT: Is that what you are talking about?

10 MR. SLOTNICK: I am not interested in Mr. Morris'
11 handwriting. Mr. Capra some two months ago gave handwriting
12 samples. I am interested in the report because obviously if
13 the report is negative I need do nothing. If for some reason
14 it is positive, I need do something. As a result of that I
15 may need time, because, as Mr. Feld has indicated, these
16 handwriting experts take a little bit of time.

17 MR. STONE: I don't want Mr. Feld to be overly
18 optimistic and hold his expert in abeyance waiting for Mr.
19 Morris.

20 THE COURT: Don't be overly optimistic.

21 Now, what is the answer to his question, when do
22 you expect to have the report?

23 MR. FELD: We don't expect to have a written report
24 to be turned over to defense counsel.

25 THE COURT: Do you intend to turn over anything

he is entitled to have?

MR. FELD: We are prepared to give him an oral summary of the report that our expert gives to us.

THE COURT: When do you plan to do that?

MR. FELD: As soon as I can consult with the expert, Your Honor, and get his opinion with respect to the samples that we have taken and analyzed.

THE COURT: Do you believe that if you give an oral summary of such an expert's report and if there is to be any expert on the other side, you ought to have an oral summary in return for the trial?

MR. FELD: I would make that application, Your Honor. I believe that would be proper under the rules.

THE COURT: Mr. Slotnick, that sounds fair to me.

MR. SLOTNICK: It is not only fair, but, Your Honor, provided by the federal rules.

THE COURT: I will even follow them, if necessary.

MR. SLOTNICK: If Mr. Feld is willing to give me his reports, certainly I have an obligation to give him my reports.

THE COURT: I would prefer with this conversation on the record you will get together and work this out. I had just as soon not hear about it anymore. But if you have a disagreement, let me know.

MR. SLOTNICK: I just leave the record with the

1 dsgrs

2 following: I must await for Mr. Feld's report before I
3 can commence my proceedings. I think I have explained to
4 Your Honor why.

5 THE COURT: Okay.

6 Is this Detective Eaton?

7 MR. FELD: Yes, Your Honor.

8 G E O R G E E A T O N , called as a witness on behalf
9 of the defense, after being duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. FEITELL:

13 Q On April 13, 1971, could you tell us what your
14 assignment was -- 1973, rather.

15 A I was assigned with Sergeant Restivo of the New York
16 City Police Department to pick up one Stephen Dellacava
17 for violation of the federal narcotics laws.

18 Q Was Stephen Dellacava known to you prior to this
19 time?

20 A Yes, he was.

21 Q Could you tell me in what connection he was known
22 to you?

23 A He had been the subject of an extensive investi-
24 gation into narcotics violations.

25 Q And had you ever arrested him previously?

1
2 A Yes, I had.

3 Q In connection with a narcotics matter?

4 A Yes.

5 Q And prior to April 13, 1973, were you involved in
6 the investigation, fruition of which is this case?

7 MR. FELD: Objection, Your Honor. He doesn't know
8 whether the fruition of his investigation was this case or not.

9 THE COURT: Can you rephrase that?

10 MR. FEITELL: Yes, Judge.

11 Q Were you involved in an investigation, the facts
12 and details of which relate to the indictment of this case?

13 A Yes, I was involved.

14 Q And would it be fair to say that your active interest
15 in Stephen Dellacava developed at or about the end of 1971?

16 A Yes.

17 Q Sometime September through December?

18 MR. FELD: Objection, Your Honor. I don't see the
19 relevancy of this line of questioning in respect to counsel's
20 motions presently before the Court.

21 THE COURT: Well, I will allow it. I assume he is
22 setting the scene and we will give him some latitude.

23 Go ahead.

24 A In late December 1971.

25 Q His identity came to your attention in connection

1 dsas

Eaton-direct

236

2 with this case?

3 A Yes.

4 Q And that was in connection with some wiretaps which
5 you were monitoring; is that right?

6 A That is correct.

7 Q Now, you were telling us earlier that April 13,
8 1973, you and Sergeant Restivo had been assigned the task of,
9 did you say picking up the defendant, or what?

10 A We were assigned the task of assisting two federal
11 agents, Agent Samuel and I believe the other one's name was
12 Becknar, in apprehending Stephen Dellacava.

13 Q Prior to that time you were familiar with Stephen
14 Dellacava's general haunts and whereabouts. Isn't that a
15 fair statement?

16 A Yes.

17 Q You knew about Dianne's Bar. Is that correct?

18 A Yes.

19 Q And you had seen him there a numbers of times. Is
20 that correct?

21 A That is correct.

22 Q Did you know the places, a place or various places,
23 where he was thought to reside or to stay from time to time ?

24 A Yes.

25 Q You were familiar with his automobile?

1
2 A Yes.

3 Q And clearly with his physical appearance and face.
4 Is that right?

5 A That is correct.

6 Q And isn't it a fact that you were called upon in
7 connection with this to assist in this arrest because it was
8 you who knew very well what the defendant Dellacava looked
9 like and where he would mostly likely be found?

10 A That is conceivable, yes.

11 Q Who gave you this instruction to assist federal
12 agents?

13 A I think directly on that day it would be Restivo.

14 Q Where did you get that instruction?

15 A I think in a plant we had, located in Queens. I'm
16 not sure.

17 Q While you were operating a plant?

18 A We weren't operating a plant. We were using like a
19 sub-station. I think that's where I got my instructions.

20 Q Was that sub-station in connection with this case?

21 A Yes.

22 Q When you say "plant," you are talking about a
23 monitoring plant for telephone taps?

24 A It had been. It was not at this time.

25 Q And was it in active use at that time?

A No.

MR. FELD: Objection, Your Honor. We are really going far afield.

THE COURT: He has already said no.

Q Now, you cooperate in connection with your duties and activities as a New York State police officer with the federal authorities; isn't that true?

A That is correct.

Q Would it be fair to say that you are part of the team that has existed within the last year or two or more which is a joint federal-state team dedicated to law enforcement in connection with narcotics?

A That is correct.

Q And where are you based?

A My office is at 137 Center Street and we operated out of at that time federal marshal.

Q And your superior or one of your superiors was Sergeant Restivo?

A Yes.

Q Was he your liaison with the federal forces or did you have direct liaison?

MR. FELD: Objection, Your Honor.

THE COURT: What is the relevance of that?

MR. FEITELL: I want to trace where these orders

2 came from in connection with the arrest.

3 THE COURT: I'll allow it.

4 A It would be through the chain of command. As far as
5 I would know, it would go from Sergeant Restivo, who would
6 receive his orders from Lieutenant Gabriel Stefanian.

7 Q Speak a little louder; I'm sorry.

8 A Sergeant Restivo, Timothy Restivo, would receive
9 his orders from Lieutenant Gabriel Stefanian of S.I.U.

10 Q Stefanian?

11 A Stefanian. I believe during the course of this
12 investigation he received his orders and instructions from
13 Deputy Inspector Daniel Leonard.

14 Q Did you receive any direct communications or
15 instructions from any federal personnel in connection with
16 the arrest in this case prior to your going out to make this
17 arrest or assist in it?

18 A No. That night we started out in the field. We
19 did not start from any federal building.

20 Q Incidentally, is 137 Center Street, that's a
21 federal office?

22 A No, that's a city office.

23 Q And there are certain federal drug personnel
24 assigned there? Is that what you are saying?

25 A That is correct.

1 Q Now, what time did you get your instructions to go
2 out and participate in the arrest of Dellacava?
3

4 A I believe it was about 8:00 p.m.

5 Q Now, during the 13th of April, 1973, did you ever
6 have occasion to attend at a large gathering at a federal
7 narcotics headquarters located at 57th Street?

8 A Did you say April 13th?

9 Q April 13, 1973.

10 A No, I didn't attend that meeting.

11 Q Did you attend any other meeting in connection
12 with this case prior to the arrest of Dellacava?

13 MR. FELD: Objection, Your Honor.

14 MR. FEITELL: I'll narrow it. I'm talking about a
15 large group where instructions are given to agents as to how
16 to proceed in connection with making arrests.

17 THE WITNESS: No, I didn't attend that.

18 Q Where were you when you received this instruction
19 of making the arrest, at the sub plant in Queens?

20 A Yes.

21 Q What did you do then?

22 A Our initial instructions were to try to locate some
23 of the subjects of this investigation.

24 Q Were you specifically assigned the task of assisting
25 in the arrest of Dellacava or Dellacava and others?

1 A Dellacava and, if possible, locate other defendants.

2 Q So he was your primary target to start with; is that
3 correct?
4

5 A That is correct.

6 Q Did you leave the sub plant with somebody?

7 A Sergeant Restivo.

8 Q Did there come a time when you saw the defendant
9 Dellacava?

10 A Yes.

11 Q Where did you first see him after you left the
12 sub plant?

13 A On Lexington Avenue in Manhattan. I think about
14 two blocks north of the Bachelors Three.

15 Q And had you ever seen the defendant Dellacava at
16 Bachelors Three before?

17 A I don't recall.

18 Q Well, did you have any particular reason to believe
19 that Defendant Dellacava was going to be in the vicinity of
20 two blocks from Bachelors Three that night?

21 A Well, I had read reports that indicated that
22 certain individuals involved in this investigation were
23 frequenting Bachelors Three.

24 Q So the first place you went to was the area of
25 Bachelors Three?

1
2 A No.

3 Q Where did you go first to look for Dellacava?

4 A I think we passed Dianne's Bar and then we went
5 downtown and took a chance on Bachelors Three and one other
6 location, and I can't think of the name right now.

7 Q Did there come a time when you saw Defendant
8 Dellacava's car come into the area?

9 A I don't know whether I saw the car come into the
10 area. I became aware that the car was there.

11 Q Were you familiar with this car?

12 A Yes.

13 Q What type of vehicle was that?

14 A Oldsmobile, brown, 1973.

15 Q When you came into the area initially, did you have
16 any conversations apart from the officer that was with you,
17 Sergeant Restivo?

18 A Well, when we first got to the vicinity of
19 Bachelors Three, I noticed a station wagon that I believe
20 belonged to Jerry Zanferdino. We made radio contact with the
21 communications center stating that we believed that Jerry
22 Zanferdino was in the area of Bachelors Three.

23 Some time after that we became aware that -- at
24 least I did and Sergeant Restivo did -- that Stephen
25 Dellacava's automobile was parked on Lexington Avenue.

1
2 Q You are telling us you saw Stephen Dellacava's car
3 before you saw him?

4 A I believe that is correct.

5 Q But you are not sure?

6 A I'm not sure.

7 Q What side of the street or where was he parked?

8 A Parked on Lexington Avenue on the east side of
9 the street. I think about 64th or 65th Street.

10 Q The east side of the street?

11 A The east side of the street.

12 Q And, of course, the car was facing downtown; is
13 that correct?

14 A Correct.

15 Q And did you go over to the car and look at it?

16 A No, I didn't.

17 Q You didn't walk up to look inside to determine
18 what you could see through the windows?

19 A No, I didn't.

20 Q Did you walk up to the hood and put your hand on
21 it to determine if the motor was hot?

22 A No.

23 Q And you deduced that Dellacava was in the area
24 from this; is that correct?

25 A That is correct.

1
2 Q And did you communicate that fact to anybody by
3 radio?

4 A I believe that we had a brief conference with the
5 two federal agents who came down to meet us at that location.

6 Q And you never told them that Dellacava was in
7 Bachelors Three, did you?

8 A I might have told them I believe he is in there,
9 yes.

10 Q So you weren't sure he was until you made the
11 call; right?

12 A That is correct.

13 Q Did you stake yourself out near or about Bachelors
14 Three, awaiting the arrival of the federal agents?

15 A We positioned ourselves about a block behind the
16 automobile.

17 Q When you say behind, what do you mean by that?

18 A North of the car.

19 Q Now, there were parking places south of Bachelors
20 Three that would have been available, too; isn't that so?

21 MR. FELD: Objection, Your Honor.

22 THE COURT: On what ground?

23 MR. FELD: Irrelevant.

24 THE COURT: I'll allow it.

25 A There probably were, yes.

1
2 Q But you decided to park your car north of
3 Dellacava's; in effect, behind his. Is that correct?

4 A That is correct.

5 Q So that if Dellacava's car pulled away from the
6 curb you would be behind it rather than in front of it;
7 correct?

8 A That is correct.

9 Q And were you parked on the same or the other side
10 of the street?

11 A The opposite side of the street.

12 Q So as to give you a better position to make
13 observations when he got into it; correct?

14 A That is correct.

15 Q Part of your strategy was to see if he would come
16 back to the car and get into it; correct? You were thinking
17 about that, weren't you?

18 A It may have entered my mind, yes.

19 Q And did there come a time when federal agents came
20 into the area and came into your presence?

21 A Yes.

22 Q When was that?

23 A It could have been within a half hour, 20 minutes,
24 15 minutes. I'm not really sure how long.

25 Q Now, will you tell us what time it was that you saw

1 Dellacava's car for the first time?

2 A I think it was shortly after midnight.

3 Q Did you have any federal agents otherwise arrayed
4 in the area, or state police, or city detectives?

5 A Eventually, yes, other agents and detectives did
6 arrive because we had, as I said, notified them of the
7 presence or the probably presence of Jerry Zanferdino. Then
8 we became aware that Moe Lentini was in the area also.

9 Q Had you seen Jerry Zanferdino go into the bar,
10 Bachelors Three?

11 A No, I didn't.

12 Q So that was also supposition on your part that he
13 was in there. Isn't that true?

14 A Yes, that is correct.

15 Q Are you familiar with any Italian restaurants in
16 that area?

17 A No.

18 Q On Lexington and 61st?

19 A No, I'm not.

20 Q To your knowledge were any law enforcement officers
21 staked out in the area in connection with this or related
22 cases before you got to the Bachelors East area?

23 A There may have been, but I don't think there was.

24 Q Well, this communication of information about your
25

discovery, did you see as a result of that the appearance in the area of a number of law enforcement officials and vehicles?

A Other law enforcement officials did arrive there, yes.

Q Did you ever tell or are you familiar with Special Agent Samuel?

A I know who he is, yes.

Q When for the first time did you meet him?

A I don't know when for the first time, but I think I met him up at 57th Street on occasion.

Q In connection with this and related cases?

A Not specifically, no. We did not, as far as I know, discuss this case, or I didn't even know he was involved in this case.

Q So you hadn't worked with him on this case before? Is that your testimony?

A As far as I know, yes.

Q And you hadn't funnelled any information to him in the prior eight months before this arrest was made, to Samuel; is that correct?

A Not so far as I can recall.

Q Now, when Agent Samuel came into the area, he came directly to your car so far as you know?

A As far as I know, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Were you seated in your vehicle?

A Yes.

Q When he came to the area?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q What did he say to you and what did you say to him?

A Well, I believe that the sergeant got out of the car and spoke to him.

Q So you weren't present at any of the conversations. Is that right?

A They stood outside the car. I don't think I participated in the conversations.

Q You mean Sergeant Restivo -- Incidentally, was he driving the car or were you driving?

A Sergeant Restivo was driving the car.

Q And you were sitting in the front seat next to him. Is that right?

A That is correct.

Q And this special agent, Samuel, came over to the car and Restivo got out?

A That is correct.

Q But you didn't get out?

A I don't believe I did.

1
2 Q Did they conduct a conversation on the sidewalk?

3 A A very brief one.

4 Q Did you hear what they said?

5 A I don't think so.

6 Q You don't think so?

7 A No.

8 Q Did you make any notes at the time?

9 A No.

10 Q Do you have any notes in connection with that
11 evening's events leading up to the arrest?

12 A No, I don't.

13 Q Did you make any reports in connection with the
14 arrest?

15 A No, I didn't.

16 Q Well, did there come a time when you did speak to
17 Samuel at or about that vehicle at or about that time?

18 A I may have pointed the vehicle out to him, but I
19 really don't recall.

20 Q So you didn't participate in any conversation that
21 you can recall with Samuel at that time?

22 A I may have. I don't recall any specific conver-
23 sations.

24 Q Do you recall that you told Special Agent Samuel
25 that you had tailed Dellacava into the area and had seen him

1 dsge
2 park his car? Do you recall telling him that?

3 A No, I don't.

4 Q Do you deny that you told him that? Do you deny it?

5 MR. FELD: The witness says he doesn't remember.
6 The question is not proper in form. He is cross-examining
7 his own witness. He just doesn't recall.

8 THE COURT: Overruled.

9 You may answer.

10 A I don't recall whether -- I don't recall telling
11 him that I tailed Dellacava into the area.

12 Q But you don't deny that you might have told him?

13 A I didn't tail him into the area so I don't think
14 I could have told him that.

15 Q Do you deny telling him that you had seen, actually
16 seen Dellacava before he went into Bachelors Three?

17 A Yes, I didn't tell him that. I believe that some-
18 body eventually went into Bachelors Three and identified
19 two of the parties inside the place. I might have told
20 him that he was seen.

21 Q Well, when you left the sub plant and went directly
22 to Dianne's Bar, that was about 8:15; right?

23 A I didn't go directly to Dianne's Bar at 8:15.

24 Q Where did you go?

25 A Sergeant Restivo and I were sent out to Huntington

1 to watch Leo Guarino's house until federal agents came out
2 there.
3

4 Q What time did you leave there, to come back toward
5 the city?

6 A It was a little bit after ten o'clock, it could have
7 been 10:30.

8 Q When did you arrive in Manhattan?

9 A A quarter after eleven; 11:30, something like that.

10 Q And between a quarter after eleven and a quarter
11 after twelve, what did you do?

12 A We went past Dianne's Bar and then we surveilled
13 the area in the vicinity of Bachelors Three.

14 Q Those are the only two places you looked at; right?

15 A To the best of my knowledge, because as soon as we
16 saw the station wagon belonging to Jerry Zanferdino, we felt
17 that maybe our man would show up there, too.

18 Q Now, following the conversation which you can't
19 recall the contents of, which took place between Samuel and
20 Restivo out on the sidewalk -- Incidentally, did they duck
21 into a doorway to have this discussion?

22 A No.

23 Q Do you know why Restivo got out of the vehicle
24 and didn't have this conversation in front of you?

25 MR. FELD: Objection, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FEITELL: If he knows.

THE COURT: I will allow it.

A He just jumped out of the car. He might have wanted to see the warrant. I'm not sure.

Q And when Restivo -- shortly thereafter Restivo got back into the vehicle?

A Yes.

Q And what happened to Samuel?

A I believe he got in the car and they parked the car someplace. I'm not exactly sure where they parked it.

Q You don't know where they parked it?

A No.

Q Did you have a discussion with Restivo at that point?

A I guess we did have general discussions while we were sitting there, yes.

Q Now, you had received objective verification from an agent who went into the bar that Stephen Dellacava was there; right?

A That is correct.

Q And his car was in the area; right?

A That is correct.

Q Okay. Did you tell Mr. Samuel to go into the bar and execute the order, execute the warrant?

1
2 A I didn't tell him anything. There were other people
3 in the area involved in this investigation.

4 Q Now, did you see what happened to Samuel, where he
5 deployed?

6 A I believe he deployed himself south of us. I'm
7 not sure.

8 Q Did he remain in his vehicle?

9 A I don't know.

10 Q Was he on the avenue, Lexington, if you know?

11 A I don't know where he actually parked or stood or
12 whatever he did.

13 Q Did you have an arrangement to keep in radio
14 communication with him?

15 A Yes.

16 Q Isn't it fair to say that your objective was to
17 let Dellacava come out of the bar and make the arrest subse-
18 quent, sometime thereafter? Yes or no.

19 A Yes. That's a fair assumption.

20 Q Did you see Stephen Dellacava come out of
21 Bachelors Three?

22 A Yes.

23 Q Did he have anything in his hand that you can
24 recall?

25 A No, not that I can recall.

1 dags

Eaton-direct

254

2 Q Did he come out with anybody?

3 A Not that I know of.

4 Q Well, you didn't tell Samuel on the radio that he
5 came out with anybody, did you?

6 A No, I didn't.

7 Q That you remember, right?

8 A Yes.

9 Q And did you tell Samuel where he was going, the
10 direction in which he was headed?

11 A I have a feeling that maybe Agent Samuel saw him
12 come out, too. I'm not sure.

13 Q That isn't my question. I am saying, did you say
14 anything through your radio to Samuel that you saw Dellacava
15 come out and you were tracing his direction?

16 A I believe we had radio contact, more in the line
17 of confirming that it was him.

18 Q What did you observe Dellacava do?

19 A He walked north on Lexington Avenue on the east side
20 of the street. He stopped at a telephone booth. He went in
21 it. I don't know whether he made a phone call or didn't. He
22 came out after a short period of time and I think he walked
23 another block and did the same thing again. I'm not too sure
24 of that. I know he went into at least one phone booth.

25 Q And he was traveling north at this time?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Walking.

Q On his feet?

A That is correct.

Q By himself?

A That is correct.

Q And you knew that there were a substantial number of agents in the area; true?

A Yes.

Q Because you had alerted them to be there; right?

A That is correct.

Q And you had seen them converge in automobiles shortly after your message; correct?

A I had seen some of them, yes.

Q Do you have any idea about how many agents materialized that night in the environs of Bachelors Three?

A Anywhere from four to eight, maybe. I'm not sure.

Q Did you ever tell Special Agent Samuel on the radio, "He is by himself at a phone booth, you can arrest him now"? Did you ever say that to him in words or substance?

A No, I didn't.

Q In discussing the matter with Restivo, was it your understanding that Dellacava was going to be permitted to wend his way back to his vehicle before the arrest was made? Was that your understanding? Yes or no.

1 A That is partially correct.

2 Q And there came a time when Dellacava got to his
3 car; is that correct?

4 A That is correct.

5 Q Are you testifying that in order to get to his car
6 he had to cross eastward across Lexington Avenue?

7 A That is correct.

8 Q You observed that; right?

9 A That is correct. He crossed in the vicinity of
10 Bachelors Three, though. Then he walked up the east side of
11 Lexington Avenue.

12 Q So he was -- you had an angular view of him in your
13 side of the street; is that correct?

14 A That is correct.

15 Q And isn't it fair to say that the pedestrian
16 traffic on that side of the street was kind of light at two
17 o'clock in the morning; isn't that so?

18 A That is correct.

19 Q There weren't very many people at all at that hour;
20 right?

21 A True.

22 Q This was a Saturday morning, to your recollection?

23 A Yes.

24 Q And did you see Dellacava do anything before he
25

1 got into his vehicle?

2 A I don't believe he did anything.

3 Q Did you see him open up the trunk?

4 A No.

5 Q Nothing unusual that you observed before he got
6 into the car; right?

7 A That is correct.

8 Q And when Dellacava started up his vehicle and
9 pulled away, did you communicate that fact to Samuel? Yes or
10 no.

11 A I believe that Samuel was watching him at the same
12 time. We did converse back and forth.

13 Q Did you tell Samuel that now we are going to tail
14 him?

15 A I don't think I did. I think Sergeant Restivo did
16 that.

17 Q Did you have any discussion about when and where
18 you were actually going to arrest Dellacava?

19 A Yes.

20 Q On the radio?

21 A Yes. To get him away from the area of the
22 Bachelors Three so if there were any other co-conspirators
23 in the area they would not see him being arrested and possibly
24 flee.
25

1
2 Q And when you saw Dellacava emerge and go north two
3 blocks, he wasn't with anybody, was he?

4 A He was alone.

5 Q So that if you wanted to, you and your brother
6 officers could have converged on Dellacava, taken him by the
7 arms, and put him right into a vehicle and put him under
8 arrest; right? If you wanted to?

9 A With risk of being seen.

10 Q Who did you see on the street connected with this
11 case that you feared would observe you? Who did you see?

12 A Moe Lentini had pulled up right behind us at one
13 point while we were parked on Lexington Avenue.

14 Q Who did you see on the street at that time?

15 A There were not many people, but there was the chance
16 that any other party could come along when we did.

17 Q Did you see the arrest warrant in the case?

18 A I didn't.

19 Q Well, did Sergeant Restivo tell you he saw the
20 arrest warrant?

21 A In so many words I believe he said he had the warrant.

22 Q He checked it out on the sidewalk and it looked
23 good?

24 A I think so.

25 Q Did he tell you he had talked to Samuel about

1 delaying the arrest? Yes or no?

2 A Not delaying the arrest, no.

3 Q There came a time when the defendant was on 86th
4 Street near Lexington Avenue?

5 A Yes.

6 Q Driving in what direction?

7 A I believe he was driving east on 86th Street.

8 Q Wasn't he stopped at a light?

9 A Yes, he was stopped at a light. He had been
10 traveling east.

11 Q And there were two vehicles tailing at that point?

12 A Yes.

13 Q And one of them cut him off. Is that right?

14 A Yes.

15 Q Now, when you emerged from your vehicle you went --
16 you drew your gun; is that correct?

17 A I believe I did, yes.

18 Q Tell us what happened in connection with the
19 actual arrest.

20 A He stopped for a traffic light on 86th Street
21 facing east at Lexington Avenue. Sergeant Restivo was the
22 operator of the vehicle I was in. I was the passenger of
23 that vehicle. Agent Samuel and Agent Becknar, I believe,
24 were in the other car, the car that eventually did pull in
25

1 front of Mr. Dellacava's car. We pulled up behind him and
2 the light was still red and I think prior to the agent's cutting
3 in front of him there was another car in front of Mr. Dellacava.
4 We jumped out of the car, I took the passenger side of
5 Mr. Dellacava's car and Sergeant Restivo took the driver's
6 side where Mr. Dellacava was seated. Within a few second
7 Agent Samuel and Becknar were at Sergeant Restivo's side taking
8 Mr. Dellacava out of the vehicle.
9

10 Q What, if anything, was said to the defendant at
11 that time?

12 A He was placed under arrest.

13 Q What was said? Who said what to whom?

14 A I think Sergeant Restivo informed him that he was
15 under arrest.

16 Q Did he tell him what for, if you can recall?

17 A I can't recall.

18 Q What about the arrest warrant, did you see it
19 produced on the spot and shown to Mr. Dellacava or not?

20 A No, I didn't.

21 Q Did you ever see the arrest warrant shown to
22 Dellacava?

23 A I don't recall, no.

24 Q Was Dellacava searched?

25 A He was patted down at first, yes, for a weapon.

Q Did you find a weapon?

A No weapon was found.

Q Was he searched in any other way at that time?

A No.

Q Tell me what happened with respect to the vehicle at that time and place, was it searched?

A Not at that time and place. As soon as we had him in custody we took Mr. Dellacava and his vehicle over to the West Side to get him off the streets on the East Side. And over on the 79th Street, the vehicle was searched. I believe it was searched because the vehicle was going to be --

Q I've got your answer, thank you.

Now, you tell us it was taken to 79th Street.

Where?

A The boat basin.

Q You have been there before, haven't you?

A I don't think I have been there before.

Q To your knowledge, was that a garage facility of the Department of Highways or the Department of Sanitation?

A It seemed that it was, yes.

Q And it is a structure that is beneath the roadway; is that correct?

A That is correct.

Q Out of direct view from the passing public; right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That is correct.

Q And whose idea was it to go there?

A I'm not sure.

Q Before you went there did you know of the existence of this facility?

A I knew that it existed. I didn't know it was a garage, as you said it is, and as it appeared when you get there.

Q In connection with your narcotics work, hasn't that facility been used over the years as a place to sequester a defendant, to interrogate him, and to search him, to your knowledge?

A Not to my knowledge.

Q Now, when you pulled into the facility did you ask admittance to come in?

A No.

Q There were people on duty in the facility; right?

A I don't know. Nobody was around. We didn't see anybody.

Q Were the lights on?

A There were lights on underground, yes.

Q Did you see any signs of life in there?

A No.

Q Did you see any vehicles moving around?

1
2 A Occasionally a car would come through, and I don't
3 know where it went, if it came right out again or not.

4 Q You picked yourself a secluded place within that
5 area. Is that right?

6 A It was a well-lit area.

7 Q And what did you proceed to do there? Did you
8 interrogate the defendant at that point?

9 A I believe Agent Samuel advised him of his rights
10 and we did have discussions with Mr. Dellacava.

11 Q Do you remember at that time Mr. Dellacava asking
12 to have permission to call his lawyer?

13 A I don't recall that, no.

14 Q Well, did you know who Mr. Dellacava's lawyer had
15 been in the past?

16 A On a previous occasion, yes.

17 Q Who was that?

18 A Mr. Santangelo, Michael.

19 Q Did you know whether Mr. Santangelo knew other
20 defendants in the case?

21 A Repeat that, please.

22 Q Did you know whether Mr. Santangelo knew any other
23 defendants in this case, Guarino, Capra?

24 A Yes, I believe he does.

25 Q You knew that?

1 dsgrs

2 A I know he knows Mr. Guarino.

3 Q Part of your objective in conducting this arrest,
4 participating in it and the way you moved the person of the
5 defendant about was to prevent disclosure of his arrest;
6 isn't that so? Yes or no?

7 A To other co-conspirators he was moved off the street
8 and the car was searched.

9 Q Did it ever cross your mind that if you permitted
10 him to call Michael Santangelo, other people connected with
11 the case would know that an arrest had been made?

12 A I don't think he ever raised the question, sir.

13 Q Well, you arrested the defendant before, didn't you?

14 A Yes, I did.

15 Q And you were aware of the defendant's criminal
16 sheet, weren't you?

17 A Yes.

18 Q And you knew he had had substantial hassles with
19 the law. Isn't that so?

20 A That is correct.

21 Q And he had had brushes with the law over the last
22 10 or 15 years; isn't that so?

23 A Yes.

24 Q Is it your testimony he never once said in your
25 presence or to your knowledge that he wanted to speak to an

1 attorney, from the time of his arrest throughout the search
2 procedure at that facility?
3

4 A I don't recall him saying it. He may have said it.

5 Q He might have said it; right?

6 A That's right.

7 Q Now, did there come a time when you participated
8 in a search of his vehicle?

9 A No.

10 Q Did there come a time when you stood by and
11 observed the search of his person?

12 A Yes.

13 Q And what did you see happen?

14 A I think some certain amount of money was taken off
15 and counted, and I don't know whether it was returned to him
16 right away or later on. I think his identification was
17 looked at. I'm not really too sure what came out of that
18 search.

19 Q Who was logging that property there?

20 A One of the federal agents.

21 Q Did you take any notes regarding that?

22 A No.

23 Q Were any personal papers of his gone through at
24 that time?

25 A Probably, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did they look through his wallet?

A Yes.

Q And were those all taken away from him?

A I think they were, yes.

Q In fact, all of the papers that he had in his possession were taken off his person. Isn't that so?

A I think so.

Q To your knowledge, the Government possesses them at this point. Is that so?

A That I don't know.

MR. FEITELL: I'll ask for a concession on that at this point so we can cut through this.

MR. FELD: What is the point?

MR. FEITELL: The items of property taken from his person.

MR. FELD: I don't personally know. If you would like us to find out, we will try to find out.

MR. FEITELL: I would appreciate it.

Q Did you observe a search made of the vehicle?

A Part of it, yes.

Q And did you hear the defendant give permission to make the search of the vehicle?

A No.

Q Did anybody bother to ask Stephen Dellacava for

1 dsgr

Eaton-direct

2 permission to search the vehicle?

3 A I don't believe so.

4 Q And did you see anything that was removed from the
5 body of the vehicle?

6 A The interior of the car you are speaking of?

7 Q The body of the vehicle.

8 A Are you including the trunk?

9 Q No.

10 A I don't think so. I'm not sure.

11 Q Was the trunk opened?

12 A Yes, it was.

13 Q And where was the key gotten for that?

14 A From Mr. Dellacava.

15 Q They had already seized that when they stopped the
16 vehicle. Isn't that so?

17 A That is correct.

18 Q And did you see that trunk opened up?

19 A Eventually I saw the open trunk.

20 Q What time did that happen?

21 A I don't know.

22 Q Well, what time was the defendant brought down to
23 that facility to begin with?

24 A I imagine about 2:40.

25 Q And there was an attempt at interrogating him.

1
2 Isn't that so, at that point?

3 A Yes, there was.

4 Q Isn't it so there were certain communications made
5 over radio back to your base headquarters. Isn't that so?

6 A That is conceivable, yes.

7 Q So that at a certain point in time you got the go-
8 ahead to make a search of the vehicle; isn't that so?

9 A I think it was routine operating procedure.

10 Q Well, did you check down the base to get permission
11 to search the vehicle?

12 MR. FELD: I think the witness ought to be permitted
13 to finish his answer before counsel continues the questioning.

14 MR. FEITELL: I'm sorry.

15 A I believe it is police department and federal
16 procedure, when you search a vehicle you have to inventory
17 any valuables inside the car.

18 Q Are you saying that's the procedure in connection
19 with an arrest or in connection with a tow-away?

20 A That's the procedure with an arrest, with a tow-
21 away, or a stolen car when it is recovered.

22 Q Are you familiar with the special order or
23 procedure of the New York City Police Department which
24 authorizes that conduct?

25 A No, I am not specifically.

1
2 Q Where did you find out about this? Did somebody
3 tell you about it or did you read it?

4 A It was routine operating procedure to safeguard
5 any valuables in the car.

6 Q You never read it anywhere that in connection with
7 an arrest as opposed to a tow-away that you didn't have to
8 get a warrant, that you could just make your inventory search;
9 right?

10 A If the car is going to be seized it is a Department
11 regulation to safeguard any valuables in the car, specifically
12 I can't identify where in the manual it is, but it's in there.

13 Q So far as you were concerned, you were governed
14 by procedures applicable in the New York City Police Depart-
15 ment. Is that right? Is that what you are telling us?

16 A No. On this occasion we were governed by federal
17 agents. We were assisting federal agents in performing their
18 duty.

19 Q Well, you didn't make the arrest, did you?

20 A No, I didn't.

21 Q And it wasn't your search you just said; right?

22 A That's right.

23 Q So all you are telling us now is that it is your
24 belief that under city procedures this would have been all
25 right to make an inventory search; is that right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It would have been required.

Q But you can't tell us where you got that authority from?

A Any vehicle that is --

Q I know what you said.

MR. FELD: I don't think it is necessary for him to identify a regulation.

THE COURT: I wish you would go on to something else.

Q Now, you knew that the defendant was then under arrest under very serious charges. Isn't that so?

A Yes.

Q Do you know the bail that was ultimately set in the case?

MR. FELD: I object, Your Honor.

THE COURT: Withdraw the question, or do you want me to sustain the objection?

MR. FEITELL: You should sustain it if you wish to.

THE COURT: I am directing you to get very relevant and move on. I don't want to hear anymore about New York City law. I'm going to hold you a little, Mr. Feitell.

MR. FEITELL: I am nearly finished, Your Honor.

Q Were you present when a vacuuming of the vehicle took place?

A No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Do you know when that was conducted?

A No.

Q Do you know if that was conducted as a part of the inventory procedure?

A I have no idea.

Q Do you know if any warrant was sought after that to permit that search?

A No, I don't know.

Q Did you hear any discussion that evening at this facility on 79th Street indicating that the car was going to be kept and not returned to the defendant?

A I got that impression, yes.

Q That it was going to be impounded; right?

A Yes.

Q Do you know of anybody who was coming by that night to claim the vehicle to pick it up?

A No.

Q Had Mrs. Dellacava or anyone else that you know of in the defendant's family been advised to come over and pick up the vehicle?

A No, not that I know of.

Q And do you know in fact that the vehicle was taken from that place to a place of safekeeping in federal custody?

A From 79th Street to a federal garage?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Yes.

A Yes.

Q You know it was kept there for some period of time, don't you?

A I don't know how long.

MR. FEITELL: That's all I have.

CROSS-EXAMINATION

BY MR. FELD:

Q When Dellacava left Bachelors Three he walked to his automobile which was a few blocks away; is that correct?

A Yes.

Q Now, had he not stopped at his automobile but kept on walking, what would you have done?

MR. FEITELL: Objection.

THE COURT: Sustained.

Q Isn't it a fact that you would have followed him?

A Yes.

Q And continued to follow him until he was arrested?

THE COURT: Isn't that the same question that I sustained an objection to?

MR. FELD: It wasn't objected to by counsel, Your Honor.

THE COURT: I know, but maybe he is tired.

MR. FEITELL: I'm sorry, I'm not tired, just trying

1 to follow the strictures of the Court and I don't want to keep
2 bouncing up.
3

4 THE COURT: I won't allow the question.

5 MR. FELD: May I make an offer of proof in connection
6 with that question?

7 THE COURT: Surely.

8 MR. FELD: It seems to me --

9 MR. FEITELL: At the side bar?

10 MR. FELD: If that is counsel's request.

11 (At the side bar.)

12 MR. FELD: Your Honor, it seems to me that the
13 defense in its cross-examination of Detective Eaton has
14 attempted to establish that the agent deliberately waited
15 until he got into the car in order to create some kind of
16 pretext for searching the car, and I think it is fair to
17 point out, at least the witness ought to be permitted to
18 answer a question, which would show that their purpose was
19 to arrest him in a situation which would not create other
20 problems in that if he had not entered the car and done
21 something else, they would have followed him.

22 THE COURT: There are right ways to do things and
23 wrong ways to do things. You may well have a right to show
24 his purpose and if you can figure out a permissible way to
25 do it, I will let you. That is not an offer of proof, what

1 dags

Eaton-cross

274

2 you just did, anyhow, but I don't want to quibble.

3 (In open court.)

4 Q Was there a plan concerning the arrest of Dellacava,
5 how if should be effectuated?

6 MR. FEITELL: Objection. This has already been
7 covered. As to the modus operandi --

8 THE COURT: Covered by whom? This is the second
9 question on cross-examination. First I sustained your
10 objection to or without regard to numbers it is overruled.

11 A What the theory was was to try --

12 THE COURT: Answer yes or no. Was there a plan for
13 this arrest?

14 THE WITNESS: Yes.

15 Q What was the plan?

16 A To try to make or apprehend Mr. Dellacava without
17 arousing the suspicions or make any other parties to this
18 conspiracy aware that he was being arrested. Therefore, let
19 him get away from where some other co-conspirators are,
20 arrest him quietly, and bring him to 57th Street.

21 MR. SLOTNICK: I apologize. I have difficulty
22 hearing the witness.

23 THE COURT: Do you want the answer read to you?

24 MR. SLOTNICK: I'd appreciate it.

25 (Question and answer read.)

Q As a matter of fact, didn't you feel there was a potential risk of other possible co-conspirators in the area being notified by virtue of him being arrested at the place of his automobile in proximity to Bachelors Three?

MR. FEITELL: I object.

THE COURT: Sustained.

Q Do you know why he wasn't arrested at his automobile?

MR. FEITELL: Asked and answered, Your Honor.

You just got that in the first answer about the plan.

THE COURT: Now, I will allow it. It has been answered and we will just have some repetition.

A He was not arrested when he first reached his automobile or when he walked up Lexington Avenue or when he got into the vehicle because we felt he was too close to at least one other co-conspirator and who could observe this and possibly notify other people.

MR. FELD: No further questions.

REDIRECT EXAMINATION

BY MR. FEITELL:

Q What other co-conspirator was he close to when he got into his vehicle?

A Not close to.

Q Didn't you just say that?

1
2 A No. Jerry Zanferdino was supposed to be in
3 Bachelors Three. There was nothing to prevent him from
4 walking out the door and watch us grab Dellacava.

5 Q But that didn't happen, Zanferdino didn't come out?

6 A But he could have.

7 Q But he didn't?

8 A As far as I know he didn't, that's correct.

9 Q Now, this plan that you just told us about, when was
10 the plan developed?

11 A Well, for us it was developed on the street there.

12 Q When you were sitting in the vehicle and Sergeant
13 Restivo got out, is that when the plan was made?

14 A There was an overall plan to try to take as many of
15 these co-conspirators as possible without arousing the
16 suspicion of others. For us it was a smaller scale and that's
17 what we tried to do.

18 Q Are you telling us this was the objective in your
19 mind, this is what you were thinking?

20 A This was the overall plan to arrest as many as
21 possible as quickly as possible without letting everybody
22 else involved know.

23 Q This plan, is this something you talked about with
24 your brother officers?

25 A With superiors that laid this out to us and this

was the method of operation, take them quietly.

Q In connection with this particular arrest?

A With all the arrests.

Q Where did that plan or where was that plan verbalized to you?

A In the Queens sub office, whatever you want to call it.

Q They knew at that time when they were talking to you that it was in Bachelors Three?

A No, sir.

Q But you really got into that conversation on that telephone call; right?

A What conversation?

Q A phone call came into the sub plant; right?

A No. There was a superior there. Three superiors were there and it was said -- it was said if you came upon a situation where arresting a man at any given location might tend to alert other co-conspirators, let them get away from there. If you have enough help, take him.

Q Are you telling us this is standard operating procedure, that that's how you make arrests?

A Normal arrests do not involve 85 or 65 people. If we took two or three people and within a half hour everybody else knew about it, there is a chance we might not have

1 gotten the others.

2 Q These people might clean out their cars; right?
3 That was a problem, too; right?

4 A I have no idea what they do with their cars.

5 MR. FEITELL: No further questions.

6 THE COURT: All right, Detective Eaton, thank you.

7 (Witness excused.)

8 MR. FEITELL: No other witnesses.

9 MR. FIELD: The Government has no further witnesses.

10 THE COURT: All right, we will take about ten
11 minutes and then I believe, subject to what I hear from you,
12 I will give you perhaps an opportunity to argue this briefly
13 or to put in some memos if you think that is a good idea,
14 and we will proceed in order to satisfy Mr. Slotnick's eager-
15 ness, and for even better reasons, to begin with the subject
16 of minimization after the recess.

17 MR. FIELD: Your Honor, may I speak to that? In
18 the first place, the Government would like an opportunity,
19 since we are submitting a memorandum to the Court by Monday
20 in connection with the standing question in Toledo, that we
21 also submit as part of that our legal arguments with respect
22 to the validity of the search.

23 THE COURT: All right. Give me two separate
24 memos, because I have two files, and you may do the same,
25

1 dags

2 Mr. Feitell. So that takes care of that.

3 Let's take ten minutes and then we will again --
4 Do you have something else?

5 MR. FIELD: We were prepared to go forward with
6 respect to the statement made by the defendant Capra in
7 connection with Mr. Slotnick's oral motion to suppress that
8 statement.

9 MR. FEFFER: We have both witnesses available at
10 this time, Your Honor.

11 THE COURT: All right. I will be sometimes a
12 little flexible. I will allow that. We will proceed to that
13 after the recess.

14 (Recess.)
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Leolusa Guarino, resumed		128	132	136
David Samuel	142	146	222	224
George Eaton	234	272	275	-

EXHIBITS

	<u>FOR IDENT.</u>	<u>IN EVID.</u>
<u>GOVERNMENT EXHIBIT NO.</u>		
3501	187	216
1	215	-
<u>DEFENDANT'S EXHIBIT NO.</u>		

A	197	-
B	217	218

entirely all the time (SW) I
 had all of the money and all
 (two) years of the time (two) years
 of the time (two) years of the time

[Handwritten signature]
 OFFICIAL COURT REPORTER
 11 & 12th Street
 NEW YORK, N.Y.

